

OFFICE OF ATTORNEY GENERAL

WAYNE STENEHJEM, ATTORNEY GENERAL



2003-2005 Biennial Report

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DUTIES AND RESPONSIBILITIES OF THE OFFICE OF ATTORNEY GENERAL

The Attorney General is one of twelve statewide elected offices in North Dakota, and was established in the 1889 state constitution. The office is headed by the Attorney General, an independently elected constitutional officer, and is comprised of several divisions of highly specialized staff and attorneys.

Qualifications for Office

To be eligible for election to the office, an individual must be 25 years of age, qualified to vote in North Dakota, and a licensed attorney.

Duties and Functions

The Attorney General represents the state in all legal matters, civil and criminal, where the state is named as a party or the state may have an interest in the outcome of the litigation. The office also provides legal services and opinions to state legislators, state officials, constitutional officers, state agencies, boards, and commissions.

The Office of Attorney General has approximately 30 attorneys divided into five divisions: State and Local Government, Criminal and Regulatory, Consumer Protection and Antitrust, Natural Resources and Indian Affairs, and Civil Litigation.

The office enforces the Open Meetings and Open Records laws, and issues opinions in response to complaints that a public entity has violated those laws.

In addition to our role as the “state’s lawyer,” the Office of Attorney General has several divisions with regulatory or investigative functions:

- The **Bureau of Criminal Investigation (BCI)** assists local governments in criminal and drug enforcement investigations, maintains the criminal history and sex offender registration systems, and provides training for law enforcement officials.
- The **Fire Marshal’s Office** conducts fire safety training and inspections, controls hazardous materials incidents, and investigates fires.
- The **Lottery** division is responsible for the day-to-day operation of the Lottery and its games.
- The **Gaming** division regulates charitable gaming, and ensures compliance with tribal-state casino gaming compacts. The **Licensing** section regulates and issues certain wholesale, retail, and distributor licenses.
- The **Crime Laboratory** analyzes samples from drug and alcohol related criminal cases, and evidence from crime scenes.

- The **Finance, Administration, and Information Technology** divisions provide support within the agency.

Boards and Commissions

The Attorney General serves on numerous boards and commissions, including the Board of University and School Lands, Industrial Commission (which oversees all state-owned industries), North Dakota Commission on Drug and Alcohol Abuse, North Dakota PERS Board, Judicial Council, and Pardon Advisory Board.

Our Commitment

The Office of Attorney General serves the people of North Dakota. We are committed to providing instant access, via the Internet, to information and resources on a variety of issues, including:

- Sex Offender website - www.ndsexoffender.com - provides information about sex offenders who may be living in your neighborhood.
- Information regarding scams, identity theft and consumer fraud, concealed weapons, gaming, detailed sex offender information, and more from our home page: www.ag.state.nd.us
- Information about the state's Open Record and Open Meetings laws is on the "Open Records and Meetings" link.
- Attorney General opinions are posted on our home page almost immediately after they are issued. Also, access the opinion archive by clicking on the "Legal Opinions" link.
- North Dakota residents can reduce unwanted telephone solicitations by registering home and cellular telephone numbers on the state's Do Not Call list. Click on the "Do Not Call" link on our home page.
- Information about the Lottery and its games is online at www.ndlottery.org.

OFFICE ORGANIZATION AND MANAGEMENT

The Office of Attorney General is organized into 13 divisions with specific duties and responsibilities: Bureau of Criminal Investigation, Civil Litigation, Consumer Protection and Antitrust, Criminal and Regulatory, Finance and Administration, Fire Marshal, Gaming, Administration, Information Technology, Natural Resources and Indian Affairs, North Dakota Crime Laboratory, North Dakota Lottery, and State and Local Government.

The Attorney General also supervised the activities of the North Dakota Racing Commission during the 2003-2005 biennium. The Commission licenses and regulates activities relating to live and simulcast pari-mutuel horse racing and encourages the

growth of North Dakota's racing industry. The Commission consists of the chairman and four other members appointed by the Governor. Day-to-day activities are handled by the director of racing who is appointed by the Commission and works closely with the Office of Attorney General. In 2005 the Legislature made the Racing Commission an independent board.

BIENNIUM EXPENDITURES

Total expenditures for the biennium were \$29.37 million. The office had 174 authorized FTEs and a salary base of \$16.9 million. Of the total expenditures, \$17.22 million (59%) was general fund monies, \$8.78 million was federal funds (30%), and \$3.37 million (11%) was special funds. A series of charts detailing the breakdown of expenditures for the biennium are included at Appendices A, B, and C.

COSTS ASSOCIATED WITH REPRESENTATION

The costs associated with defending and prosecuting actions on behalf of the state by attorneys in our office was \$2.19 million. This represents a 68% increase in litigation costs from the 2001-03 biennium. This was due in part to an increase in litigation against agencies.

Five of our divisions were responsible for the representations – civil litigation, criminal, state and local government, natural resources, and consumer protection. Information regarding the split of costs between divisions is included at Appendix D. In addition, the Risk Management Division of the Office of Management and Budget spent \$430,995 in legal fees associated with actions against the state. These fees were paid to various special assistant attorneys general and for services provided by our office.

In addition to fees paid for legal actions, the office also monitors the legal fees paid for the services of the 209 special assistant attorneys general. These special assistant attorneys general are either attorneys employed by state agencies as in-house counsel or are private attorneys employed to do legal work for statutorily created boards and commissions. During the 2003-2005 biennium an additional \$5.46 million was paid in either salaries or legal fees for these special assistant attorneys general. Of these fees, an undetermined percentage was expended for litigation-related services. Included within these costs were in-house counsel salaries and private law firm legal fees totaling \$1.78 million for services provided to the North Dakota Workers Compensation Bureau, up from \$1.72 million during the last biennium.

ADMINISTRATION DIVISION

The Administration Division is responsible for providing personnel support services, coordinating public education and information programs, coordinating relations with the legislative branch, and supporting the efforts of the North Dakota Commission on Drugs and Alcohol.

Public Information

In addition to literally thousands of telephone calls received by the Office of Attorney General dealing with everything from requests for general information to consumer protection complaints, the office addressed numerous questions from citizens. The office received and responded to over 2,340 citizen e-mails during the biennium, representing a 193% increase over the 2001-2003 biennium. In addition, the office received more than 600 letters. The public information office maintained an average time of 2-3 days for responding to constituent letters and 1-2 days for e-mail responses.

During the biennium, the division continued its efforts to provide the public with informative and useful information regarding the Office of Attorney General and state government in general. Particularly popular with educators and persons involved with youth was a brochure explaining the legal consequences of teenage sexual activity. The office also continued to prepare and distribute brochures to the public on various topics including the functions of the Office of Attorney General, Concealed Weapons permits the Do Not Call law, Eminent Domain, Identity Theft, Methamphetamine, Pyramid Schemes, Small Claims Court, and Tenant Rights, and a booklet entitled "Scams, Shams and Flimflams" containing information on consumer rights and common scams. Additionally, the Office of Attorney General updated its web site by expanding its contents. Many of our informational brochures, in addition to several forms, are now accessible to the public on the web site. The web site also includes Attorney General Opinions, the Concealed Weapons Manual, and the Open Records and Meetings manual.

Meth Summit

The Office of Attorney General presented a summit in May 2003, focusing on methamphetamine (meth). The three-day summit offered training and education to law enforcement officers, treatment and addiction counselors, teachers and prosecutors, and addressed a variety of topics ranging from detection of meth and detoxification of addicts, to education and community prevention strategies. The summit attracted over 700 professionals from private businesses and federal, state, tribal, and local, government organizations across North Dakota, Minnesota, Montana, and as far away as Saskatchewan and Manitoba.

Legislative Activities

The division also coordinated the Attorney General's legislative agenda. During the 2005 Legislative Session, the office solicited legislative support on several key pieces of legislation directed at combating the escalation of methamphetamine abuse in the state. While maintaining a commitment to law enforcement by sponsoring legislation to strengthen the fight against methamphetamines (meth), the Office also facilitated the introduction and passage of key treatment legislation. The meth-related bills sponsored by the Attorney General included:

- Some of the toughest restrictions on the sale of ephedrine-based cold products in the nation;
- A pilot program requiring mandatory treatment for first-time felony drug offenders;
- Mandatory random drug testing for individuals arrested for meth-related offenses and released on bail; and
- New restrictions on individuals who ingest, inhale or otherwise use controlled substances.

The Attorney General also facilitated the development of several other key legislative initiatives including:

- Clarification to enhance laws dealing with the civil commitment of sex offenders;
- Enhancements to laws protecting consumers from identity theft and other consumer fraud issues; and
- Clarifications to the open meetings and open records laws designed to ensure the public's access to records.

Discussion of other legislation supported by the Office is included within the descriptions of the various divisions of the Office.

North Dakota Commission on Drugs and Alcohol

In early 2002 at the request of Attorney General Wayne Stenehjem, the North Dakota Commission on Drugs and Alcohol (Commission) was formed by executive order issued by Governor John Hoeven. The Commission's charge was to evaluate substance abuse in North Dakota by a) exploring the interrelationship between substance abuse prevention, education and enforcement programs; b) designing procedures to coordinate resources in the substance abuse area; and c) pursuing avenues to ensure future coordination of resources designed to address substance abuse issues. The Commission was instrumental in providing technical assistance in several of the legislative initiatives discussed above. The Commission will continue its work in the 2005-2007 biennium.

Personnel Support

Personnel support services provides assistance with hiring, retention, evaluations, reclassifications, salary administration and other personnel issues. During the biennium employees received evaluations under the office-wide evaluation program. The division also initiated and completed reviews for possible reclassification of employees.

The Office of Attorney General provides equal opportunity in employment for all persons. In compliance with federal and state law, the Attorney General continues to file an Equal Employment Opportunity Affirmative Action Plan designed to encourage the participation and advancement of all sectors of North Dakota's population. To increase exposure to minorities, the Office continues to make contacts with the public regarding positions available in the Office of Attorney General through high school and college career fairs and requested appearances.

BUREAU OF CRIMINAL INVESTIGATION

The Bureau of Criminal Investigation (BCI) is the law enforcement division of the Office of Attorney General. The Bureau has full law enforcement and arrest authority throughout the state of North Dakota. By statute, the role of BCI is to assist law enforcement, except when otherwise ordered by the Attorney General. There are three sections within BCI that provide services to local, state, and federal law enforcement agencies: investigative, information services, and administrative services.

The Investigative Section assists local, state, and federal law enforcement agencies in the investigation of crimes across the state of North Dakota. The division has field offices in Bismarck, Devils Lake, Dickinson, Fargo, Grafton, Grand Forks, Jamestown, Minot, Rugby, Stanton, Valley City, Wahpeton, and Williston. The field offices house criminal and narcotics agents who support local law enforcement agencies in criminal investigations. The Information Services Section compiles crime data on a statewide level and serves as the state's central repository for criminal history information. This section also provides training to peace officers and prosecutors, and licenses all peace officers. The Administrative Services Section oversees federal grants for state and local criminal justice agencies, maintains offender registration records, coordinates a number of special projects, and provides day-to-day support functions required for staff located throughout the state.

INVESTIGATIVE SECTION

The Bureau's investigative section assists local and state law enforcement agencies in murder, burglary, cybercrime, sexual assault, theft, and narcotics trafficking investigations statewide. Thirty-four agents assist local authorities in conducting and coordinating their investigations. The agents also provide smaller local law enforcement agencies a mechanism through which they may share resources and personnel.

- **Cybercrime.** During this biennium, the BCI increased its manpower in this area and now dedicates the efforts of two investigators to coordinate cybercrime investigative activities and provide assistance to local law enforcement. The work demands the full attention of these agents who have the expertise necessary to properly seize unique evidence, analyze system hardware and software, adequately investigate alleged cybercrimes, and provide expert testimony in this very technical area.

These agents assist with a wide variety of investigations including narcotics activity, child pornography, child abuse, child molesters, counterfeit documents such as drivers licenses, internet auction fraud, terrorizing, extortion, and identity theft.

- **Multijurisdictional Narcotics Task Forces.** Bureau agents serve as coordinators and consultants for seven of the nine multijurisdictional narcotics task forces in North Dakota. The multijurisdictional task forces provide dedicated investigators in the area of narcotics trafficking. The Bureau and the task forces

receive additional assistance and resources to enforce drug laws from the Counter Narcotics Support Division of the North Dakota National Guard Military Support Office. The National Guard provides personnel, logistics, equipment loans, assistance with surplus equipment procurement, mission support, and transportation. They also provide vital law enforcement support through the Recognizance and Interdiction Detachment (RAID) Program. Six pilots and two OH-58 helicopters, equipped with Forward Looking Infrared Radar (FLIR), are dedicated for use in Counterdrug missions, search and rescue, surveillance, or other emergency law enforcement related situations. National Guard intelligence analysts are assigned to BCI headquarters and five multi-jurisdictional task forces.

- **Methamphetamine.** Methamphetamine (meth) continues to be the biggest drug problem challenging North Dakota law enforcement. The number of methamphetamine laboratory seizures in North Dakota in 2004 decreased to 260 compared to 297 in 2003. During the 2003-2005 biennium, 67% of BCI investigations were drug related, and meth was involved in 42% of those cases.

Most local agencies are unable to respond to these situations without the assistance of the BCI and rely heavily on the BCI to provide its expertise in the area of drug enforcement. The Bureau has teamed with their local law enforcement partners in establishing task forces that are having a significant impact on major trafficking organizations.

The Office of Attorney General continues to participate as a member of the Midwest High Intensity Drug Trafficking Area (HIDTA), a regional network that includes the states of North Dakota, South Dakota, Iowa, Nebraska, Kansas, and Missouri. This partnership provides for regional collaboration, demand reduction, and intelligence activities. The association with HIDTA has provided a tremendous boost to the efforts to combat methamphetamine by allowing the Bureau to maintain additional HIDTA staff including three special agents located throughout the state and two forensic scientists for the Crime Lab.

Public Education

The willingness of local residents and businesses to report suspicious drug activity accounts for much of the success of law enforcement efforts in these areas. This is largely due to the efforts of agents throughout the state who are actively involved in their communities and who provided community awareness training about the signs of meth abuse and manufacture to 26,969 adults and children. Because they work in the middle of the meth crisis, agents are current on the latest trends and can share anecdotal stories with the public that are extremely effective in proving the danger of this drug. Their credibility and expertise has resulted in ever-increasing demands for public awareness presentations on methamphetamine and labs, as well as other drugs.

Significant Cases

- July 2003 – An indoor grow operation consisting of four hundred high grade marijuana plants was seized in Ashley, North Dakota. The street value of the marijuana was \$400,000.
- July 2003 – While making an undercover purchase of narcotics at the West Acres mall parking lot, two armed individuals fled the scene and entered the mall. After a large-scale search, the two suspects were taken into custody, and weapons and drugs were seized.
- August 2003 – An indoor grow operation consisting of one hundred plants was seized in Mapes, North Dakota. The street value of the marijuana was \$100,000.
- August 2003 – Narcotics agents were conducting a search warrant at a south Bismarck home and came under gunfire while making entry. Three Bismarck Police Department swat officers were wounded. After a lengthy standoff and gun fight, one suspect was killed and one taken into custody.
- August 2003 – Agents assisted the United States Border Patrol in Bottineau County with the seizure and search of a pickup and firth wheel camper. The search resulted in 225 pounds of BC bud being seized.
- August 2003 – A subject in Traill County shot and killed his mother after his mother tried to negotiate with him to put the gun down. The subject then shot and killed himself.
- October 2003 – Three masked subjects abducted a sixteen-month old child from her mother while the child and mother were walking in the Buffalo Mall parking lot in Jamestown. An Amber alert was issued, and the subjects were apprehended in Dickey County. The child was safely returned to its mother.
- November 2003 – BCI investigated the Burke County sheriff who allegedly embezzled money from the county which had been collected as fines from people who were caught entering the United States with a small amount of narcotics. It was also alleged that the sheriff was keeping money after collecting civil process. While an adequate paper trail did not exist, the sheriff did resign.
- November 2003 – Agents assisted Immigration and Custom Enforcement in Portal with the search of a truck/tractor rig resulting in the seizure of 1,235 pounds of marijuana.
- November 2003 – A University of North Dakota student was kidnapped in the Columbia Mall parking lot. Her body was later found in Minnesota. A convicted Minnesota sex offender was charged with her sexual assault and murder.
- December 2003 – A convenience store in Wahpeton was robbed and the clerk shot. Two individuals from Fargo were later arrested and convicted.

- January 2004 – BCI was asked to investigate the Burke County State’s Attorney for misappropriating approximately \$425,000 from two clients he represented in his private practice. He was convicted in federal court.
- February 2004 – Several subjects beat a person to death over a period of hours in Devils Lake while at a party. Various charges including murder and aggravated assault were filed against a number of male and female subjects.
- February 2004 – Two hundred fifty pounds of high grade BC bud marijuana were seized from two suspects from Washington during a traffic stop in Dickinson. The marijuana was valued at \$750,000.
- February 2004 – A subject produced a gun while being booked into the Barnes County Jail. The subject held jail personnel hostage for a time before killing himself.
- March 2004 – Robert Meikle lured over the internet, kidnapped, and sexually assaulted a fourteen year-old juvenile female from Rolette County. Use of computer forensics and the state’s Amber alert system let to the successful location of the victim and eventual prosecution of Meikle.
- June 2004 – A subject was caught as he was fleeing a drug store after stealing a large amount of oxycontin. The subject pulled a gun as officers approached him and the gun discharged hitting the subject in his leg.
- June 2004 – A burned body was found in a ditch along a Towner County road. The body was that of a local female. A local male was arrested for her homicide.
- July 2004 – BCI and the DEA conducted a historical conspiracy case dubbed “Operation Yosemite Sam” that resulted in federal charges of distributing large amounts of meth and attempted murder.
- January 2005 – BCI was asked to investigate an officer-involved shooting in Dunn County. The deputy was responding to a domestic call. One subject exited the house with weapon and he was shot and wounded by the deputy.
- June 2005 – BCI assisted the Richland County Sheriff’s Department with the investigation of a homicide in Hankinson. After an all-night party, the victim was stabbed and beaten to death with several kitchen utensils. The subject stole various items from the home and was later apprehended in Hankinson.

INFORMATION SERVICES SECTION

The information services section is the state's central repository for criminal histories and crime statistics. This section maintains information systems that provide law enforcement and other criminal justice agencies with information critical to the protection and safety of the citizens of North Dakota.

The following are some of the systems maintained by the section:

- **Uniform Crime Reporting (UCR)/Incident-Based and Summary Reporting** – a statistical system that tracks crime in North Dakota and is a part of a national crime reporting system. Annual reports are prepared and published, and information is provided to law enforcement agencies as well as any persons making requests.
- **Offender Registration System** – a system for registering and tracking sexual offenders and offenders against children. It is part of a national sex offender registration initiative.
- **Criminal History Records System** – a system that compiles records of arrests and prosecutions of individual offenders for use by law enforcement, the courts, and the public. It is interfaced with the FBI's criminal records system and Interstate Identification Index (III).
- **Central Warrant Information System (CWIS)** – a system used by North Dakota law enforcement agencies to communicate information on outstanding arrest warrants for misdemeanor offenses, and to provide access to protection order information.
- **Concealed Weapon Permits** – a system for receiving and processing applications for concealed weapon permits and issuing permits to North Dakota citizens.
- **Automated Fingerprint Identification System (AFIS)** – a system operated as part of a regional program with Minnesota and South Dakota that allows electronic scanning, transmission, and storage of fingerprint image data to aid in criminal investigations.

TRAINING SECTION

The training section is responsible for providing field training and assisting with academy training for all law enforcement officers in North Dakota. In the 2003-2005 biennium 185 training programs were presented to 4,127 students. Students in attendance for training sessions represented police and sheriffs' departments, and state and federal agencies.

In addition, the section conducts the licensing and record-keeping functions for the Peace Officer Standards and Training (POST) Board. Members of the POST Board are appointed by the Attorney General and represent all facets of law enforcement, as well as city and county governments. The POST Board enforces minimum standards for the issuance and maintenance of peace officer licenses, including continuing education and weapons qualification requirements.

Criminal History Records

The Bureau continued to receive federal funding during the 2003-2005 biennium, but at a reduced level, under the Crime Bill for the Criminal History Records System. This system has undergone extensive automated restructuring with the use of federal grants over the last 17 years. The National Criminal History Improvement Program (NCHIP) was funded as part of the federal Brady Act and has provided funding for the systematic improvement of record systems.

In addition to major improvements to the criminal history record system, the NCHIP program allowed for the creation of electronic interfaces among criminal history records and other systems such as the offender registration system, CWIS, and the concealed weapon permits.

Concealed Weapon Permits

Concealed weapon permit applications increased steadily during the 2003-2005 biennium. During the biennium, 4,821 permits were issued, with the corresponding permit fees generating revenues of \$120,525. The number of active concealed weapon permits grew by 18%, from 5,920 on June 30, 2003, to 6,969 on June 30, 2005.

Automated Fingerprint Identification System

The Automated Fingerprint Identification System (AFIS) allows law enforcement to compare a single latent fingerprint left at a crime scene with millions of fingerprints contained in an automated file. The program integrates with the Minnesota AFIS installation, which serves as the repository for a regional fingerprint database for the states of Minnesota, North Dakota, and South Dakota. The Bureau scans fingerprint cards obtained from arrests in North Dakota and the AFIS then matches the cards against files in Minnesota, South Dakota and North Dakota. The AFIS system gives North Dakota state-of-the-art technology, which allows law enforcement to:

- **Improve response time.** The time it takes for fingerprints to be searched against the existing file when local law enforcement agencies submit fingerprint cards is dramatically reduced.
- **Improve accuracy in both 10-print and latent identifications.** The benchmark criteria established for this system creates a level of accuracy not matched by human abilities to classify prints when large volumes are handled.
- **Search all applicant and new arrestee fingerprints against a file of unsolved latent prints.** Any new set of fingerprints can be checked against a file of prints taken from unsolved crimes.
- **Search the master fingerprint file for both 10-print and unsolved latent fingerprints.** When a local law enforcement agency makes an arrest, law enforcement personnel can search the master file for a match, or lacking an arrest, they can check the file for a match on the latent print.

Live-scan fingerprint equipment installed in the state's largest jails interfaces with AFIS and allows fingerprint images to be transmitted at booking time, and for booking officers to receive a rapid response regarding any prior arrests of the booking subject.

During the biennium, law enforcement officers throughout the state submitted 217 cases involving latent print examination for various cases including burglaries, stolen property, forgery, armed robbery, aggravated assault, controlled substances, embezzlement, and motor vehicle theft. Thirty individuals were identified from the latent prints, including ten cold hits, where there was either no suspect or someone was identified other than the individual originally suspected by law enforcement.

Domestic Violence Annual Report

In 1996, the first Services Training Officers Prosecutors (STOP) grant was awarded to the Office of Attorney General for collecting, analyzing, and publishing data on domestic violence from several databases in order to produce a report on domestic violence in North Dakota. In 1997, three of the state's four Indian reservations were added to the report. To date, six reports have been issued using 1995 through 2001 data. The 2000 and 2001 data were published in one report in 2002. The 2002 and 2003 reports are currently in progress.

ADMINISTRATIVE SERVICES SECTION

Sex Offender Registration

During the 2003-2005 biennium, the number of registered offenders increased from 856 to 921. The number of offenders required to register increased from 1,345 to 1,467 during that period. Of the 1,467 required to register, 372 resided out of state.

A risk assessment committee, comprised of treatment, law enforcement, parole and probation, juvenile services, and victim advocates personnel met throughout the biennium to review accumulated data on each registered offender and determine each individual's risk assessment level as low, moderate, or high. To date, 898 assessments have been completed with 149 offenders identified as high risk, 262 as moderate risk, and 487 as low risk. The committee will continue to assess offenders who are either released from the penitentiary, sentenced without serving time, or coming to North Dakota from another state.

During the 2005 legislative session, changes were made to the offender registration statute which requires all registered offenders, regardless of where they were convicted, to provide a DNA sample. New legislation also clarified the requirement that registered offenders who are moving must notify law enforcement at least ten days prior to the move. In addition, a provision was made allowing the Attorney General to require, in a manner determined by the Office of Attorney General, for more frequent confirmation of offender registration information.

Grants Management

The administrative services section administers several important federal grants providing key funding for state and local law enforcement efforts.

- **Edward Byrne Memorial State and Local Law Enforcement Assistance Program.** These funds have been made available by Congress through the Anti-Drug Abuse Act of 1988 to provide financial assistance to make communities safe and improve criminal justice systems. The Byrne grant funds have been awarded to agencies by the North Dakota Drug and Violent Crime Policy Board, which consists of representatives from law enforcement, corrections, the court system, victim/witness assistance programs, human services, and prosecution. The Board developed the criteria for distribution of funds and made grant award recommendations to the Attorney General.

Criteria established by the Board have been based on a statewide drug and violent crime strategy which focused on drug and violence prevention and criminal justice system improvements. The awards were distributed to a variety of programs in the areas of enforcement, treatment, crime victim assistance, crime prevention, and corrections.

The Board recommended grants totaling more than \$4.2 million to 80 criminal justice projects including one criminal justice information systems, 29 narcotics enforcement initiatives, 33 domestic violence and victim/witness programs, one crime prevention and drug education program, two DUI enforcement programs, and 14 adjudication, prosecution, training, and treatment programs.

During the federal government's 2005 budget process, this program was merged with the Local Law Enforcement Block Grant program at a much reduced funding level.

- **Local Law Enforcement Block Grants Program.** The Local Law Enforcement Block Grants Program provided local government with federal funds to underwrite projects to reduce crime and improve public safety. During the 2003-2005 biennium, a subcommittee of the Drug and Violent Crime Policy Board recommended grants totaling more than \$200,000 to 60 local law enforcement agencies. Funds were awarded to agencies for the enhancement of officer safety and updating communications and computer information systems.
- **CounterAct Drug and Alcohol Education.** The Office of Attorney General receives a subgrant of the Safe and Drug-Free Schools and Communities Act managed by the Division of Mental Health and Substance Abuse Services of the North Dakota Department of Human Services to implement a program entitled CounterAct. The Bureau uses the money to pay for officer training and student materials for the agencies involved. The CounterAct program is similar in scope to the D.A.R.E. program – both use uniformed officers to present their drug and alcohol education curriculum to students – however, the CounterAct program requires less time commitment. (The CounterAct program consists of a 6-week curriculum and the D.A.R.E. program requires 17 weeks of instruction.)

The CounterAct program has become the primary drug and alcohol education program for many law enforcement agencies in North Dakota. The program also received outstanding support from the communities involved for two reasons. First, the program provides an effective curriculum for drug and alcohol education and second, it allows law enforcement to develop relationships with students and the community. During the 2003-2005 biennium, officers who were certified as CounterAct instructors presented the CounterAct curriculum to 3,841 students and 2,247 parents in the communities they serve.

CIVIL LITIGATION DIVISION

The Civil Litigation Division represents state agencies, officials, and employees in legal actions, including administrative hearings, state court lawsuits, federal court lawsuits, and appeals. The Attorney General and Civil Litigation Division attorneys handle cases ranging from challenges to the constitutionality of state laws to collection actions for various state agencies. The division strives to ensure that North Dakota laws are upheld and protects the interests of the State of North Dakota in the courts. From time to time, the division also becomes involved in legislative matters, when those matters are closely related to the division's primary responsibilities. During the biennium the division was staffed by an average of six full-time attorneys, one half-time attorney, and two full-time paralegals. From July 1, 2003, through June 30, 2005, division attorneys participated in 40 arguments before the North Dakota Supreme Court, three arguments in the United States Court of Appeals for the Eighth Circuit, and numerous arguments in other courts and administrative proceedings.

BANK OF NORTH DAKOTA

The Attorney General represents the Bank of North Dakota in cases seeking to recover bank loan money or property from delinquent borrowers and to collect overdue student loans. During the biennium Civil Litigation Division legal staff represented the Bank in 73 home loan foreclosures, 30 home loan bankruptcies, 43 farm loan foreclosures, 10 farm bankruptcy cases, 15 student loan bankruptcy cases, and 50 collection actions. Through its efforts this biennium, the Office of Attorney General collected \$3,671,834.80 for the Bank.

DEPARTMENT OF CORRECTIONS AND REHABILITATION/STATE PENITENTIARY

The Office of Attorney General represents the North Dakota State Penitentiary and penitentiary employees in state and federal court cases involving inmates' allegations of unlawful conduct by prison officials, including challenges to prison policies and civil rights actions. During the past biennium, Civil Litigation Division staff attorneys handled approximately 32 such cases.

The Department of Corrections and Rehabilitation, along with individual officials, was sued in November 2003 by two female inmates claiming they, and a class of similarly situated female inmates, had been discriminated against in the provision of services and programs based on their gender. In addition to the DOCR and its officials, the Southwest Multi-County Correction Center, the entity with whom DOCR has contracted to house the women inmates, was sued. There has been extensive discovery by the counsel for the inmates. The federal district court recently granted the plaintiffs' motion for class certification.

DEPARTMENT OF HUMAN SERVICES

The Office of Attorney General represents the Department of Human Services in legal actions involving the Department's programs, including economic assistance (medical assistance, Temporary Assistance to Needy Families, food stamps, and fuel assistance), developmental disability services, daycare and foster care licensure, adoptions, and child protective services. During the biennium Civil Litigation Division attorneys represented DHS in approximately 115 economic assistance, developmental disability services, and adoption cases and 89 child care licensing, child care protective services, and foster care cases.

During the biennium, civil litigation division staff represented the North Dakota Department of Human Services in an action brought in federal district court to overturn the federal Department of Health and Human Services Departmental Appeals Board's adverse decision on the federal reimbursement rate for Indian Health Services' (IHS) referred services. The federal district court agreed with the state's position, holding that the federal agency had incorrectly interpreted the statute providing for 100% federal participation for IHS' services to limit those services to only services provided at an IHS facility, rather than the clear meaning that it was to be for services that were provided "through" an IHS facility, including services that were referred to non-IHS providers. The Eighth Circuit reversed the district court, not only in the North Dakota case, but in a companion case brought in South Dakota. A determination not to appeal to the Supreme Court was made on the grounds that there is currently pending in the Ninth Circuit a third similar case which, it is expected, will be appealed to the Supreme Court. Favorable action on these suits would allow the state of North Dakota to collect considerable funds for the State share of payment for these services.

DEPARTMENT OF TRANSPORTATION

Civil Litigation Division attorneys represent the Department of Transportation in a variety of cases, including implied consent, drivers license, condemnation, quiet title, and contract cases. During the biennium, division staff was involved in 294 district court and 19 North Dakota Supreme Court appeals relating to drivers licenses, as well as other cases on behalf of the Department.

EMPLOYMENT

Job Service

During the biennium, division attorneys represented Job Service in 20 state district court and three North Dakota Supreme Court appeals involving grants or denials of unemployment benefits. Also during the biennium, staff attorneys issued 1,011 unemployment tax complaints against employers who owed payments to Job Service, resulting in 452 judgments and the recovery of \$2,460,216.35. Division attorneys also took legal action to recover employee benefit overpayments in 2,703 cases, resulting in 1,106 judgments and collection of an additional \$1,449,112.77.

Labor

The Office of Attorney General represents the Labor Department in suits against employers who have failed to pay their employees. Only the most difficult wage claim cases are referred to the Attorney General. During the biennium, Civil Litigation Division staff handled 53 wage claim cases involving 95 individual employees, recovering over \$29,000 for those employees.

Personnel

The Attorney General defends state agencies in their role as employers. As well as representing state agencies in state and federal court in employment cases, staff attorneys also defend state agencies in matters appealed through the Central Personnel Division. Staff attorneys also give general legal advice on such topics as the Americans with Disabilities Act, Family Medical Leave Act, and the Fair Labor Standards Act.

PROFESSIONAL LICENSING BOARDS AND COMMISSIONS

Civil Litigation Division attorneys represent numerous state professional licensing boards and commissions in a variety of cases, including appeals from the denial of applications, and disciplinary actions. Most cases are handled or resolved at the administrative hearing stage, although some administrative decisions are appealed to the district court for review where division attorneys also handle those appeals.

RISK MANAGEMENT FUND

Chapter 32-12.2, N.D.C.C., creates a self-retention program, the State's Risk Management Fund, administered by the Office of Management and Budget. Division staff provides general counsel advice to the Risk Management Fund.

Division staff also represent the State Risk Management Fund in litigation. Four hundred thirty-six new claims were filed with the Risk Management Fund during the biennium. Division staff assisted the State Risk Manager in responding to and resolving many of the claims. Division staff also defended the Risk Management Fund in 50 lawsuits filed during the biennium, as well as lawsuits existing from the prior biennium.

OTHER SIGNIFICANT CASES OR MATTERS

- Division staff is currently involved in defending an action commenced by nine school districts challenging the constitutionality of North Dakota's statutory system for financing public schools. Like the school finance lawsuit a decade ago (*Bismarck Public School District No. 1 v. State*), the complaint alleges the funding system fails to equalize local property tax disparities, resulting in substantial inequities in educational opportunities in property poor districts, violating the educational and equal protection provisions of the North Dakota Constitution. Unlike the prior lawsuit, the complaint also alleges that the funding

system does not provide school districts adequate funding to provide students with a constitutionally adequate education.

The parties are currently conducting discovery. A three-week bench trial is scheduled to commence February 27, 2006. After the district court issues its decision, it is likely the district court's decision will be appealed to the North Dakota Supreme Court. It is possible the Supreme Court could issue its decision before the 2007 legislative session.

- To address the growing problem of increased telemarketing calls and allow North Dakota citizens to regain privacy within their residences, the 2003 Legislative Assembly enacted N.D.C.C. ch. 51-28, the Telephone Solicitations Act. Two nonprofit corporations who use paid telephone solicitors to solicit funds challenged the constitutionality of the Act, asserting the Act infringes on their First and Fourteenth Amendment rights. The district court found the Act constitutional as applied to commercial solicitors. The district court found the Act unconstitutional, however, to the extent its restrictions apply to charitable speech.

The State appealed the district court decision to the Eighth Circuit Court of Appeals. Briefs have been filed and the case has been argued. The State is waiting for the Eighth Circuit's decision.

- During the biennium division staff handled and favorably settled litigation commenced to protect donations made to the Anne Carlson Center for Children and local nursing homes. The plaintiff brought an action in federal court to prevent the Attorney General from pursuing relief in state court. The federal district court agreed with the Attorney General, and dismissed the federal action for lack of subject matter jurisdiction. Plaintiff appealed that decision to the Eighth Circuit Court of Appeals.

Meanwhile, the Attorney General sought relief through the state court. The district court, however, dismissed the state's suit for failure to state a claim upon which relief can be granted. The dismissal was appealed to the North Dakota Supreme Court.

While both appeals were pending, the parties settled the matter. The settlement included plaintiff paying \$1,000,000, which was distributed to the affected North Dakota healthcare communities.

Amicus Curiae Involvement

Amicus curiae -- or "friend of the court" -- briefs are filed by a state or other entity in a pending court case in which it is not a party. The briefs are designed to provide the court with information or a perspective that should be considered in the court's decision but that might not be presented to the court by the parties to the case. The Civil Litigation Division monitors the requests the State receives from the attorneys general of other states or other entities to write or join these amicus briefs.

During the 2003-2005 Biennium, the Office of Attorney General received 283 requests to write or join briefs amicus curiae, the majority of the briefs being filed in the United States Supreme Court. The Office of Attorney General joined or wrote briefs in 60 of these cases.

MSA and NPM Statute Enforcement

In November 1998, the Attorney General joined 45 other states and five territories in a settlement agreement against the nations largest tobacco manufacturers. The Master Settlement Agreement (MSA) includes base payments to states totaling 220.6 billion for the next 25 years, and continues in perpetuity. North Dakota's share of the settlement is expected to be 866 million over the next 25 years. The amount of the annual payment is subject to a number of modifications including adjustments for inflation and usage volumes. Some of the adjustments may result in increases in the payments (inflation, for example), and other adjustments will likely cause decreases in the payments (volume adjustments, for example). At the end of the biennium, the State had received \$152,847,157.29 in total settlement payments. Of that amount \$46,310,009.72 was received during the 2003 biennium.

The MSA provides for a Non-Participating Manufacturer (NPM) Adjustment. The NPM Adjustment applies if the Original Participating Manufacturers lose market share and it is determined, by an accounting firm, that the provisions of the MSA were a significant factor contributing to the market share loss. The NPM Adjustment, however, does not apply to a state that had a Qualifying Statute in effect and diligently enforced the provisions of the statute. N.D.C.C. ch. 51-25, adopted by the 1999 Legislative Assembly, is a qualifying statute. The statute basically requires the NPMs to pay funds into an escrow account based upon the number of cigarettes sold in North Dakota.

During the biennium, Civil Litigation Division staff spent substantial time enforcing N.D.C.C. ch. 51-25. In many cases, after appropriate communications and documentation, the NPM complied with the statute. A number of lawsuits, however, were filed against non-complying NPMs.

During the biennium, division staff also spent time defending and assisting in the defense of lawsuits challenging the MSA and Qualifying Statutes. To date North Dakota and the other states have been successful in defending all challenges to the MSA and Qualifying Statutes.

CONSUMER PROTECTION AND ANTITRUST DIVISION

The Attorney General's Consumer Protection and Antitrust Division ("CPAT") enforces the state's consumer fraud laws that prohibit misleading and deceptive practices in connection with the sale or advertisement of merchandise. The division investigates and prosecutes consumer fraud cases, mediates individual consumer complaints, and educates the public on how to avoid becoming victims of fraud. CPAT enforces the state's Do-Not-Call laws through education, investigation, and legal action. It is also responsible for antitrust enforcement, including investigations and legal actions. In addition, when in the public interest, CPAT conducts investigations and legal actions for violations of the nonprofit corporation laws. The division has also become the state's clearinghouse for identity theft prevention, complaints, and victim assistance. During the biennium, CPAT opened 3,056 complaints and investigations and closed 3,190 files. The division recovered \$1,519,858.52 in consumer restitution, collected an additional \$1,043,710.43 in other legal recoveries, and collected \$216,157.76 in fines and costs in approximately 58 civil actions.

The division emphasizes public education to prevent and combat consumer fraud. The eight-member staff made 111 public appearances discussing consumer fraud issues. In addition, CPAT initiates and coordinates numerous efforts to educate consumers through the media. These efforts include the production of a weekly newspaper column entitled "Too Good To Be True" that is printed in newspapers throughout the state; issuing news releases and consumer alerts; and participating in frequent radio programs and television appearances throughout the state to talk about current consumer scams.

The Attorney General is committed to providing a statewide coordinated approach to ensure that all North Dakota students are given the opportunity to develop the basic consumer and financial skills necessary for responsible citizenship. The division continued its participation in the National Consumers League's "LifeSmarts" competition, a game show style competition that tests students' consumer knowledge or skills in the areas of personal finance, health and safety, the environment, technology and consumer rights and responsibilities. All North Dakota schools offering grades 9-12 are invited to participate in an online competition to qualify for the state competition. Twelve finalist teams then compete in the state competition. The Attorney General hosted the eighth and ninth state LifeSmarts competitions. The 2004 winning team participated in the national LifeSmarts competition in Chicago, Illinois, and the 2005 winning team participated in the national LifeSmarts competition in San Francisco, California.

DO-NOT-CALL ENFORCEMENT

Since the enactment of North Dakota's Do-Not-Call legislation in 2003, the Attorney General has pursued enforcement through business and consumer education, investigations, and legal actions. During the biennium, the division received 241 complaints for solicitations to consumers registered on the national and state do-not-call

registry, and 277 complaints for pre-recorded messages in violation of the do-not-call laws. The division conducted 74 investigations and reached 47 settlements with total civil penalties collected in the amount of \$55,750. The division issued six cease and desist orders against fraudulent do-not-call violators, prohibiting those businesses from engaging in any future sales or business activities in the state. The division also obtained one judgment in the amount of \$95,000 against a Florida violator.

IDENTITY THEFT AND SECURITY BREACHES

The Consumer Protection division has become the state's clearinghouse for identity theft complaints, victim assistance, and identity theft prevention. The division conducts numerous identity theft presentations each biennium. The division encourages identity theft victims and law enforcement agencies to file identity theft complaints with the Office of Attorney General. The division then provides victims with assistance to properly report the crime, how to contact creditors, credit reporting agencies, etc., and how to report the theft and correct the information on file from the identity thieves. The division provides the victims identity theft affidavits which are filed with creditors. Since implementing the Attorney General's identity theft program in September 2004, CPAT has issued approximately 50 Identity Theft Affidavits.

In addition the Attorney General has participated in several investigations concerning security breaches by data warehouse, credit card companies, or other entities that collect financial or confidential information. Those investigations are ongoing to determine if such entities have engaged in illegal or wrongful acts in violation of state or federal law.

CEASE AND DESIST ORDERS

During the biennium CPAT issued 21 cease and desist orders for fraudulent or illegal activity. These orders typically are issued in the event of blatantly fraudulent activity, or in circumstances that present imminent harm to consumers. All businesses and individuals subject to cease and desist orders have the right to challenge the order at an administrative hearing and to appeal an unfavorable decision to the district court.

MISCELLANEOUS ENFORCEMENT

The division responded to a large increase in grant complaints by issuing several cease and desist orders, entering into assurances of voluntary compliance and stepping up efforts to identify and shut down fraudulent grant and lottery programs. Scams originate from such diverse places as Florida, Utah, Panama, Canada, St. Lucia, Costa Rica and India. The Consumer Protection division is working with state, federal and international law enforcement personnel to address the problem.

SIGNIFICANT LEGAL ACTIONS

The Office of Attorney General through CPAT pursued numerous investigations or actions against individuals or entities under consumer protection, do-not-call and other

laws. The following is a brief description of some of the division's in-state investigations or legal actions during this biennium:

- **Banner Health Systems.** In November 2002 the Attorney General sued Banner Health Systems asking the court to declare a constructive or charitable trust on millions of dollars of assets removed from North Dakota for use by Banner in Arizona and Colorado, when Banner sold its five nursing homes and a hospital in five North Dakota communities including Fargo, Jamestown, Valley City, Enderlin, and Lisbon. The lawsuit also included a claim by the Attorney General to protect the charitable assets of the Anne Carlsen Center for Children in Jamestown. At the time of the lawsuit Banner continued to operate the Anne Carlsen Center for Children. Banner, in June 2003, agreed to donate the Anne Carlsen Center for Children to an independent board of directors with no ownership by or affiliation with Banner. In December 2003 the Attorney General settled the lawsuit with Banner for a \$1 million dollar payment by Banner, as charitable proceeds for the benefit of the affected healthcare facilities or healthcare related purposes. Banner's decision to donate the Anne Carlsen Center for Children was a substantial factor for the Attorney General in the December 2003 settlement, as it ensured that North Dakota would always have the benefit and control of one of North Dakota's most treasured institutions.
- **FreeEats.com, Inc.** Obtained \$20,000 judgment against a Virginia company, FreeEats.com, Inc., which was found to have violated the Do Not Call law by directing unauthorized prerecorded messages to North Dakota telephone subscribers. FreeEats.com challenged the validity of North Dakota's law, asserting federal law, which treats prerecorded messages differently, should apply. Judge Gail Hagerty granted the Attorney General summary judgment, finding North Dakota law was not preempted by federal law and FreeEats had violated state law. FreeEats has appealed and a decision from the North Dakota Supreme Court is pending.

FreeEats also filed a petition with the Federal Communications Commission in Washington, D.C., asking the Commission to declare North Dakota's law preempted by federal law. The Attorney General is opposing the petition and filed a brief which was joined by Attorneys General from 42 states and territories.

- **AT&T.** Obtained affidavit in settlement after investigation showed billing error involving AT&T's basic rate \$3.95 monthly recurring charge. Under settlement terms, AT&T paid refunds to North Dakota consumers totaling \$18,509.33.
- **Diabetes Education and Research Organization.** Obtained an Assurance of Voluntary Compliance against respondent DERO for alleged violations of the Consumer Fraud Law and the Charitable Solicitation Law, providing for payment of \$6,663.22 in restitution and fees.
- **Extreme Research, Inc.** Initiated investigation relating to violations of Pyramid Schemes Act and Consumer Fraud Law in which respondent conducted

meetings in North Dakota, asking consumers to pay money for the opportunity to recruit participants and sell product.

- **Trevino, Michael.** Obtained judgment against West Fargo house-movers Michael Trevino, Shannon Keeves and Triumph, Inc. for restitution, penalties and attorney's fees in the amount of \$114,178.50.
- **Consumer Grants USA, Inc.** Obtained a \$95,422 judgment against Consumer Grants USA, Inc., Ultimate Funding Plus, Inc., Ultimate Funding, Inc., Customer Care Plus, Inc. and James T. Lovern, for multiple violations of the Do Not Call Law, Consumer Fraud Law and a Cease and Desist Order. The businesses had been soliciting North Dakota consumers, promising those who paid a "processing fee" of \$239 would receive grants of \$8,000 to \$25,000. Lovern, who controlled the corporations, was found personally liable for the conduct of his businesses. In addition to the monetary judgment, the St. Petersburg, Florida entities are permanently enjoined from doing business in North Dakota and are required to provide restitution to any North Dakotan victimized by the fraudulent scheme.

The Office of Attorney General, through CPAT, also participated in several multi-state actions. The attorneys general of several states, including the North Dakota Attorney General, usually bring these actions. Judgment or settlement proceeds from these cases are shared by the participating states. The State of North Dakota participated in, among others, the following multi-state actions during the biennium:

- **Wireless Carriers (Verizon, Cingular and Sprint PCS).** The Attorney General participated in a multi-state investigation and legal action resulting in a settlement with three of the nations' largest wireless telephone provide carriers, Verizon, Cingular, and Sprint PCS, that required the carriers to: 1) provide coverage maps to consumers; 2) consumers with at least two weeks to terminate service contracts without termination penalties; and 3) change the way these carriers advertise and sell their services and coverage. North Dakota received payment in lieu of civil penalties in the amount of \$106, 666.
- **First Data Bank.** Obtained settlement agreement from medical records processor for North Dakota Department of Human Services in the amount of \$18,377.05, plus \$3,000 in attorney's fees, for a total recovery of \$21,377.05.
- **Relafen.** Obtained settlement agreement from drug manufacturer for North Dakota Department of Human Services in the amount of \$16,798.00.
- **Alyon Technologies.** Obtained a consent judgment against Alyon Technologies and its billing service, TelCollect, for unauthorized billings to consumers the defendants alleged accessed online adult web sites when, in fact, consumer denied accessing such websites, and some of the consumers billed did not have computers. The companies agreed to reform their billing practices and to remove charges or make refunds. The defendants agreed to pay the Attorney General \$30,000.

- **New Access Communications.** In a multi-state action, the Attorney General reached a settlement with New Access Communications as the result of an investigation alleging the company used deceptive practices in its telemarketing calls, misrepresented the actual price of its services, and misled consumers into believing they could save money by switching to New Access. In addition to injunctive relief the business paid the Attorney General \$70,000 in lieu of civil penalties.
- **Oracle/Peoplesoft.** In joint effort with the Department of Justice, investigating proposed merger of enterprise software companies, one of whom, via a recent procurement, provides most of the operating software for IT and higher education in North Dakota. Month long trial as co-plaintiff with Department of Justice, other states, ended in July, 2004 and resulted in judgment for Oracle.

CRIME LABORATORY DIVISION

The goal of the North Dakota Crime Laboratory (Crime Lab) is to provide scientific support to the state's criminal justice system by use of accepted techniques in the analysis, identification, and comparison of physical evidence involved in the investigation and prosecution of criminal offenses.

Services provided by the Crime Lab include:

- Examination of physical and toxicological evidence for local, state, and federal law enforcement agencies, the military, prosecutors, and defense attorneys.
- Provide follow-up on referrals to local, state, and federal agencies involving death investigations.
- Equipment selection, inspection, repair, and training of law enforcement agents in breath alcohol analysis.
- Investigation and response to clandestine methamphetamine laboratories.
- Maintaining a DNA database of convicted offenders.
- Providing expert testimony in court.

SIGNIFICANT ACCOMPLISHMENTS DURING THE 2003-2005 BIENNIUM:

- Staff members worked with the Department of Health on their storage facility. The facility eases some of the on-going storage issues at the laboratory.
- The laboratory received 12,697 total cases: 5,571 narcotics, 5,408 blood alcohol (driving under the influence), 1,225 urine/blood drug screens, 358 biological screening/DNA, 39 latent fingerprint cases, 37 arson, 38 firearm/toolmark, and 21 miscellaneous cases.
- The current trends indicate methamphetamine cases will increase. As a result, one forensic scientist was added during the last biennium, along with operating expenses needed to assist in handling the substantially increased workload. With this additional scientist, the laboratory maintained a 27-day average turn-around time for narcotic cases during the last biennium. Also, during this same time the workload increased from 4,370 methamphetamine samples processed last biennium to 5,150 samples processed, a 17% increase.
- During the past biennium, Toxicology held 24 classes and trained 328 law enforcement officers in the use of breath alcohol instruments. An additional 892 officers received certification for breath equipment remotely via the use of video training tapes.

- Lab staff members maintained, supported, and certified 792 non-evidentiary and 77 evidentiary breath alcohol instruments for law enforcement agencies for a total of 6,436 breath alcohol cases statewide.
- The laboratory maintained national accreditation for DNA testing and for Convicted Offender Databasing from the National Forensic Science Technology Center.
- Lab staff members received 445 convicted offender samples (for the National DNA Database) for the biennium.
- The laboratory maintained the National Integrated Ballistic Information Network for North Dakota – a database for collecting and exchanging ballistic information between states.
- Laboratory staff testified in over 92 administrative hearings, depositions, and court.
- Laboratory staff members collaborated with the Agency's IT staff to develop an in-house Laboratory Information System to replace an older database management system.

CRIMINAL AND REGULATORY DIVISION

The Criminal and Regulatory Division conducts research on legal issues for local prosecutors and law enforcement officials, and conducts or assists in the prosecution of criminal cases when requested by a local state's attorney. During the 2003-2005 biennium, the division employed three attorneys and two alcoholic beverage licensing administrative employees.

The division provides legal services to various state agencies and officials, including the Department of Corrections and Rehabilitation and the North Dakota Highway Patrol. Within the office the division assists the Bureau of Criminal Investigation, and the Gaming and Consumer Protection divisions. The division also handles the legal issues associated with alcoholic beverage licensing. The division's work includes the initiation and prosecution of enforcement actions for gaming and alcoholic beverage administrative rule and statutory violations, assistance in, and coordination of, criminal investigations, and participation in administrative hearings and state and federal court actions, including habeas corpus proceedings.

The division also assists state's attorneys and city attorneys, state and local law enforcement agencies, and other state agencies in the prosecution of criminal offenses. This past biennium, the division handled a wide variety of felony and misdemeanor criminal prosecutions, including child sexual abuse, theft, drug, and various sex offenses. Division attorneys were also actively involved in the establishment of procedures for the risk assessment, and the actual risk assessment, of sex offenders and those persons who committed offenses against children. The division also participated in training programs and public presentations regarding offender risk assessment and notification of offender community presence.

The division processes all extradition requests received by the Governor. During the biennium, there were 83 extradition requests processed.

Conducting extensive law enforcement training and preparing resource materials for state and local law enforcement officials are others functions of the division. The *Attorney General's Law Report* was prepared for distribution throughout the state and included on the Attorney General's website to apprise persons involved in the criminal justice field of recent court decisions and developments.

The division also worked closely with state and local law enforcement agencies in the implementation of 2003 and 2005 legislative enactments involving criminal justice and corrections issues.

LICENSING SECTION

The Attorney General is responsible for regulating the licenses of certain North Dakota industries and activities through the licensing section. The licensing section employed a licensing administrator and one staff member. The section issues licenses to: alcoholic beverage retailers; wholesale and retail tobacco products dealers; transient merchants;

coin-operated amusement devices operators, lessors, and distributors; fair boards; polygraph examiners and interns; charitable gaming operators; gaming manufacturers and distributors; and wholesale fireworks distributors. Total revenue deposited by the licensing section was \$26,216,923. An analysis of deposit activity can be found at Appendix E.

FINANCE AND ADMINISTRATION DIVISION

The Finance and Administration Division provides administrative and office financial services. The division is responsible for budget, payroll, and accounting matters; information processing; and purchasing and other administrative functions.

During the biennium the State implemented several PeopleSoft modules, including the financial modules. The PeopleSoft conversion and continued PeopleSoft operations have significantly increased both the amount of time to process financial transactions and the time to find transactions on the system.

The online PeopleSoft procurement module was successfully implemented. This module also takes more time to generate the purchase orders. Purchase cards have been implemented for the staff members who generate a significant portion of the items purchased. This method has been working very well.

FIRE MARSHAL DIVISION

The Fire Marshal Division's goals are the prevention of fires through education, training, inspections and investigations. The division's main office is located in Bismarck and there are four field offices located in Grafton, Fargo, Dickinson, and Minot.

The division conducts fire investigations to determine origin and cause. During the biennium the division conducted 117 fire origin and cause investigations. Of these, arson was determined to be the cause in 19% of the investigations.

The Fire Marshal Division provides services and education in areas including building plan review, fire prevention and life safety public education, fire investigation and inspections, and fire department certificates of existence. Fire protection and prevention technical assistance is provided to organizations throughout the state, to include response to daily requests on code interpretation from governmental authorities and the general public.

The division's emphasis on prevention is carried out through public education programs and specialized training. Education programs are conducted to assist citizens in preventing fire and protecting themselves and their families if a fire occurs. The division also provides specialized training in fire prevention, fire scene investigation, and hazardous materials response support.

To enhance the level of fire safety throughout the state, the division conducts fire inspections in public facilities, educational buildings, childcare facilities, state buildings, and at flammable material storage sites. During the biennium, the Fire Marshal staff conducted 251 school inspections, 150 fuel site inspections, 430 state building inspections, 148 hazardous materials/weapons of mass destruction classes (with 3,072 students), 22 online students for hazardous materials/weapons of mass destruction, four National Fire Incident Reporting System (NFIRS) classes, (with 64 students), 48 day care inspections, and 35 assembly inspections.

Fourteen people lost their lives to fire in North Dakota during the biennium. This compares to 19 lives lost in the previous biennium. The National Fire Incident Reporting System (NFIRS) is operational with an increasing number of fire departments (58.6%) using electronic methods to report their incidents. When using electronic methods, the local fire department is responsible for the coding of the incident information submitted.

Some of the highlights for the division during the biennium were:

- Improved the level of fire and life safety in state buildings through an inspection program conducting 430 on-site inspections.
- Developed and implemented a system for inspecting aboveground fuel sites; 150 fuel sites were inspected this biennium.

- Added several forms to the division's web page for ease of use by fire departments, adjunct instructors, and fuel site tank installers.

GAMING DIVISION

The Office of Attorney General administers, regulates, and enforces charitable gaming activity in North Dakota. Legal games are bingo, raffles, pull tabs, punchboards, sports pools, twenty-one, poker, calcuttas, and paddlewheels. The Gaming Division: 1) performs financial and compliance office and field audits, and investigations of gaming organizations, distributors, and manufacturers; 2) ensures that the receipt, control, and disbursement of gaming funds are accurate, and operated according to the law and rules; 3) processes gaming tax returns; 4) collects gaming and excise taxes and monetary fines; 5) issues administrative complaints; 6) conducts criminal history record checks of gaming employees, officers and stockholders of distributors, manufacturers, and Indian casino employees; 7) provides guidance and training to representatives of organizations, distributors, and local law enforcement agencies; 8) writes administrative rules for and assists the State Gaming Commission; and 9) ensures compliance with five tribal-state casino gaming compacts.

OVERVIEW OF THE GAMING INDUSTRY

The gaming industry has experienced phenomenal growth in size and complexity since its inception in April 1977 – 28 years ago. In the 2003-2005 biennium, there were approximately 1,100 active gaming sites, \$ 540 million was wagered, nearly \$ 33 million was raised for charitable uses, and \$19.6 million was paid to the state in gaming and pull tab excise taxes. Since 1977, \$ 416 million has been raised for charitable uses. An overview of the gaming activity for the fiscal years ended June 30, 2004, and June 30, 2005, is included at Appendix E.

SIGNIFICANT ACCOMPLISHMENTS

Gaming Rules

Continued revisions of the gaming administrative rules has clarified provisions and addressed statutory changes. The rules were printed in a small-size booklet and on the Office's web page. The rules were developed through a cooperative effort among the Gaming Advisory Board, State Gaming Commission, and Office of Attorney General.

Legislative Changes

The 2005 Legislative Assembly enacted several changes to the state's gaming statutes. The changes to statutes relating to gaming included:

- The authority of the Office of Attorney General for the inspection and investigation of gaming-related equipment and records was clarified. Reference to inspection and audits on a site or premises was eliminated to allow broader authority to seize and remove gaming related records and equipment to insure compliance with the gaming statutes.

- A new provision allows the purchase of a live animal as a prize in a raffle drawing. Previously any live animals used in a raffle drawing had to be donated. The winning player must still have the option to receive a cash prize rather than the live animal limited to the maximum single cash prize amount of \$1,000.
- A new provision removed the gaming organizations requirement for establishing an adequate system of internal control from the gaming statute and transferred this responsibility to the gaming rules. The State Gaming Commission will now establish guidelines for an organization's system of internal control through the rule-making process.
- A licensed organization on not more than one occasion per year, at the request of a winning player, may exchange a merchandise prize valued at not more than \$25,000 for a cash prize. This provision allows an organization the option of exchanging merchandise prizes previously limited to \$1,000.

Local Law Enforcement Grants

The Legislature appropriated \$617,000 for local gaming enforcement grants for the 2003-2005 biennium. The local gaming enforcement grants allocation amount is 3% of the gaming and excise taxes paid, or \$77,125 per quarter, not to exceed \$617,000 for the entire biennium. The amount a city or county receives is proportionate to the level of gaming activity within that city or county to the statewide activity. However, a city or county must have a certain level of activity each quarter to receive funds. The law provides that if the allocated amount to a city or county is less than \$200 per quarter, the amount is not disbursed but is placed back in the pool and reallocated to cities and counties that would receive \$200 or more per quarter. The total enforcement grants awarded during the 2003-2005 biennium were \$588,755.

The 2003-2005 Legislature kept funding for local gaming enforcement grants for the 2005-2007 biennium at 3% of the gaming and excise taxes paid, not to exceed \$617,000.

Education Program

The division's education program trains employees and volunteers from organizations involved in gaming activities on laws, rules, recordkeeping, internal controls, and tax return preparation. Fourteen training sessions were conducted in five major cities. A total of 338 people representing 163 organizations, one distributor, and two employees of an accounting firm attended. One-on-one training was provided to 72 people representing 35 organizations, and post audit training was provided to 67 people representing 14 organizations.

The office also publishes the "*Gaming Update*" quarterly newsletter. The newsletter is distributed to organizations, distributors, manufacturers, and members of the Gaming Advisory Board and State Gaming Commission. The newsletter includes statistics on gaming, interpretation and updates of law and rules, calendar of events, and other special topics.

Audit Program

The comprehensive financial and compliance audit programs for conducting audits of organizations continues to be refined. The audit programs include complex standard audit procedures, and tailored compliance and internal control questionnaires. Fifteen comprehensive field audits were conducted, thirteen compliance reviews, and three in-office organization reviews were completed during the biennium. Internal control manuals of several organizations were also evaluated and approved.

Enhancements to the Tax Return Processing System

Enhancements were added during the biennium to the tax return and quarterly report computer processing system. The tax return system and enhancements creates valuable databases of information and integrates the Licensing Section with the Gaming Division for optimum efficiency.

Assistance to the Racing Commission and US Attorney's Office

A division investigator provided assistance and testimony in the successful prosecution of the owner of Racing Services, Inc., the state's previous service provider of simulcast horse track betting. The owner was convicted in February 2005 of 12 counts, including conducting an illegal gambling business, conspiracy to conduct an illegal gambling business, illegal wire transfer and nine counts of money laundering. She has since been sentenced to 27 months in prison followed by two years of probation. This was the largest illegal gambling operation in state history.

Indian Gaming

The State of North Dakota has entered into tribal-state casino gaming compacts with the five Indian tribes. The compacts allow the tribes to operate reel and video slot machines, conduct craps, keno, Indian dice, twenty-one, sports and calcutta pools, poker, paddlewheels, roulette, pari-mutuel and simulcast betting, raffles, punchboards, and pull tabs on reservation land. The basic provisions of all the compacts are the same.

Six Indian casinos were operating during the biennium – two casinos operated on the Turtle Mountain Reservation, one on the Spirit Lake Nation Reservation, one on the Fort Berthold Reservation, one on the Standing Rock Reservation, and one on the Sisseton-Wahpeton Reservation. Each of the casino properties has expanded their facilities in recent years to diversify their operations and attract more customers.

The division implemented a revised background check process for casino employees during the biennium to reduce the amount of paper documents held in our office.

INFORMATION TECHNOLOGY DIVISION

The Information Technology (IT) Division provides information technology services and support to all divisions of the Office of Attorney General. The division has eight full-time employees who service and support five different locations within Bismarck and 12 other locations across the state. Because of the diversity of the different divisions within the office, the IT Division has many different business applications to support. Many of the applications have been developed and are continually maintained and supported by application staff. It is difficult to find vendor packages to meet the needs of the office. Much progress has been made over the last several years to enable our applications within the office to communicate with each other as well as with outside customers, such as the FBI. Many of the applications are critical to law enforcement in the state and are accessed through State Radio as well as now also through the CJIS hub. The effort our office put into our criminal justice applications over the last several years allowed us to setup communications with the CJIS hub rather quickly and with minimal effort.

As well as providing information to state, local and federal law enforcement agencies, the Office of Attorney General also provides a wide variety of services and information to other state agencies, and to North Dakota citizens. The IT Division uses their skills and their knowledge to help the divisions within the office improve their delivery of services. We work with other state agencies to develop applications that allow the sharing of information in a more-timely manner and to help eliminate duplication of effort.

More sophisticated computer applications working with various hardware devices, such as PDA's, telephones, etc. as well as more computer-savvy users continue to put demands on the IT division to meet current and future business needs of the agency. This often means more complexity. The IT division must continue to have a highly skilled staff to meet the demands of the agency for providing information to its customers. This requires ongoing training to maintain these skills and to be able to capitalize on new industry technological advances. Innovation and agility are keys to improving services. Our customers are becoming more computer-savvy. They are no longer just receivers of services, but participators in those services. As a result our web sites must become more interactive, more anticipatory, more customer-focused than ever before, rather than just offering information that can be read or printed. This means that our customer becomes more of a partner in the things we do, rather than just an observer. Online services where a customer can pay for the service they are receiving and obtain instant or almost instant results are becoming a way of life for many. In some cases, like with homeland security, it is a necessity, in order to preserve our way of life.

There is more information in the world today than ever before. Providing information is no longer enough. We must make sense of the information and be able to extrapolate immense amounts of data into manageable and meaningful information.

The IT Division strives to merge information and technology together in order to provide the tools needed to enable the business units to provide quality services to their

customers. In order to do all of this in a timely manner, we must find better and faster ways of building applications, and addressing business needs.

ACCOMPLISHMENTS DURING THIS BIENNIUM

- Upgraded to Office 2003
- Rewrote the Concealed Weapon Permit application from DOS-based to .NET
- Wrote an application for the Lottery to track Lottery Retailer Applications
- Created a .NET application security system to interact with .NET and Progress applications
- Worked with CJIS staff and ITD to create the CJIS hub search and display data from our applications
- Worked with CJIS staff and ITD to publish arrests, sex offender, and concealed weapon permit information through the hub
- Major enhancements were done to the Gaming application to address business auditing requirements.
- Implemented a Storage Area Network (SAN) for disaster recovery and business continuity
- Implemented hardware and software to securely handle the requests for data from our applications to and from the CJIS hub
- Replaced one-half of our computers based on our four-year replacement cycle
- Participated in four remodeling projects for the office and coordinated the efforts for rewiring needed for office technology. One major part of this was the design and moving of the Computer Room and servers.
- Participated in the requirements gathering and vendor selection for the Lottery
- Participated in the coordination of the networking needs for the new Lottery Division
- Coordinated the network needs of the Crime Lab as they became a new division under our Office
- Developed a new base application for the Crime Lab to handle the work load of the division and provide evidence tracking

LOTTERY DIVISION

On November 5, 2002, citizens of North Dakota approved a constitutional amendment that enabled the state to participate in multi-state lottery games. The 2003 Legislative Assembly created the Lottery Division within the Office of Attorney General. This division is the “North Dakota Lottery,” and is responsible for administering, regulating, and promoting a lottery. The Lottery is a state-owned business enterprise that is supervised by the Attorney General.

The Lottery processes license applications and collects application and license fees; selects eligible retailers for licensing; conducts criminal history record and credit checks; launches new games, develops point-of-sale promotional items; trains employees of retailers how to sell and redeem lottery tickets; assists retailers in promoting games; does electronic fund transfers of lottery money from retailers’ bank accounts; pays certain prizes to players; develops creative marketing, advertising, promotional, and educational programs; develops sales incentive programs; issues news releases, quarterly newsletters, and annual financial reports; develops administrative rules and proposes laws; ensures compliance with the lottery law and rules; works with the Lottery Advisory Commission, Retailer Advisory Board, on-line system vendor, and ad agency; conducts draw procedures; forecasts revenue; develops and implements security policies and procedures to protect assets and meet requirements of the Multi-State Lottery Association; investigates allegations of unlawful activity; and provides full accountability to the public and legislature.

MISSION STATEMENT

The Lottery’s mission is to maximize net proceeds for the benefit of the state by promoting entertaining games, providing quality customer service to retailers and players, achieving the highest standards of integrity, security, and accountability, and maintaining public trust.

SIGNIFICANT ACCOMPLISHMENTS

- Generated total operating revenue of \$25.3 million, prizes of \$11.9 million, net proceeds of \$8.1 million, and state general fund revenue of \$7.27 million. For an overview of financial statements, reference Appendix G, “Statement of Revenues, Expenses and Changes in Net Assets” for the fiscal years ended June 30, 2004 and June 30, 2005. The initial forecast was total operating revenue of \$11 million and state general fund revenue of \$1.43 million.
- Transferred \$400,000 to the Compulsive Gambling Prevention and Treatment Fund. The fund is administered by the Department of Human Services.
- Blueprinted, developed, implemented, and administered the Lottery. The Lottery uses the newest technology – the telecommunications network that connects retailers to the central computer system is 97.5% satellite based.

- Developed critical success factors for evaluating the Lottery's activity, including:
 1. Annual gross sales per capita in North Dakota compared to annual gross sales per capita of other state lotteries, by specific game. For the fiscal year ended June 30, 2005, the annual gross sales per capita for the games were – Powerball \$20.84; Hot Lotto \$6.15; Wild Card 2 \$3.20 (partial year). These compare favorably to other state lotteries that are similar demographically and geographically to North Dakota.
 2. Ratio of the amount of biennial state general fund revenue to biennial total operating revenue is 28.5%. This compares favorably to other state lotteries that are similar geographically and demographically to North Dakota.
- Developed an organization structure, including organization chart, job descriptions, classified positions, and recruited staff.
- Established a physically secure facility, including internal control system office, and procured equipment, furniture, and computer hardware and software.
- Developed forms and written policies and operating procedures.
- Developed administrative rules and a "Regulatory Analysis and Economic Impact Statement on Proposed Administrative Rules."
- Worked closely with a five-member Lottery Advisory Commission that serves as a policy advisor to the attorney general and director of the Lottery and serves as the audit committee. The Commission held 15 meetings. The Lottery consulted the Commission on all substantive policies, plans, issues, contracts, timelines, and activities of the Lottery.
- Worked with a 12-member Retailer Advisory Board that provides the director of the Lottery and Lottery Advisory Commission with retailers' perspectives on issues, policies, and marketing promotions. The Board held one meeting.
- Executed a contract with a security firm to provide security services of the online gaming system vendor's computer data center.
- Through a "Request for Proposals" process, executed a marketing and related services contract with an advertising agency.
- Through "Request for Information" and "Request for Proposals" processes, executed a contract with an online gaming system vendor to provide primary and secondary gaming systems hardware, games management system software, satellite-based retailer telecommunications network, four hundred lottery terminals, electronic scrolling and logo backlit signs, primary and secondary internal control systems, and five field technicians to service lottery retailers.

- Integrated North Dakota's "AMBER Alert" system into the games management system, retail terminals, and customer display signs. Worked with the Bureau of Criminal Investigation, State Patrol, IT Department, and Division of Emergency Management.
- Selected and annually licensed 400 eligible businesses as lottery retailers. The retailers are located in 120 towns and cities throughout all 53 counties. There were 591 applications for licenses.
- The numbers of retailers and sales percent, by type, are:

No.	Type	Sales %
265	Convenience Store	67%
68	Grocery Store/Supermarket	17%
33	Gas/Service Station	8%
17	Truck Stop/Plaza	4%
17	Other (i.e. Bar, Drug Store)	4%

- Trained retailers' employees on operating lottery terminals, sales and marketing strategies, and AMBER Alert system.
- Complied with the Multi-State Lottery Association's computer gaming system and computer internal control system requirements, game security standards, system standards for new lottery implementations, and game rules.
- Launched three lottery games. "Powerball®" was launched on March 25, 2004. "Hot Lotto®" was launched on June 24, 2004. "Wild Card 2®" was launched on September 23, 2004. The price per ticket is \$1. The minimum jackpots range from \$100,000 to \$10 million, and the odds of winning a prize on a \$1 play range from 1 in 6 to 1 in 36.
- Paid Lottery retailers \$1,244,795 in sales commissions.
- Developed and implemented annual and long-term sales and marketing plans, policies, and strategies to maximize sales of lottery tickets and create an effective branding image of the lottery.
- Conducted marketing promotions, including the Mandan July 4th parade, Free Ethanol Fuel Give-A-Way Promotion, Allegiant Air Give Away Trips to Las Vegas Promotion, 1st Anniversary Cash Bonus Promotion, and Powerball Power Play Retailer Clerk Promotion.
- Developed sales strategies and assisted retailers in developing individualized on-site marketing promotions, including use of premium incentive items.
- Worked with the Lottery's ad agency to develop point-of-sale items, including game brochures, tent pop-ups, promotional posters, banners, winner awareness

signs, and jackpot awareness and winning number signs, and advertising for television, radio, billboard, and print.

- Developed a logo by working with state, private, and tribal colleges and universities.
- Issued press releases on significant actions and milestones.
- Issued a quarterly retailer “Lottery Links” newsletter to retailers and members of the Lottery Advisory Commission.
- Developed and maintained an educational and informative website.
- Procured the rights to certain website domain names.
- Worked with the Protection and Advocacy Project to ensure that lottery retailers complied with The Americans with Disabilities Act.
- Set up an account with a national credit reporting company. Conducted 376 credit checks and 1,288 criminal history record checks of applicants for a license.
- Set up an automated clearing house account for electronically transferring funds from retailers’ bank accounts to the Lottery’s operating account.
- Developed and coordinated a debt setoff program with 25 state agencies. Conducted 57 debt set-off notifications, and had three matches for a total debt set-off of \$2,904.
- Developed a disaster recovery plan.
- Arranged for a \$1 million short-term line of credit with the Bank of North Dakota.
- Amended the lottery law to make it technically correct, clear, and concise.

NATURAL RESOURCES AND INDIAN AFFAIRS DIVISION

North Dakota's natural resources are vital to the State's economy and to the lifestyle and well-being of its people. The Attorney General, as a member of boards that oversee natural resources, plays an important role in their wise use and development. In addition, the Attorney General and the Division of Natural Resources and Indian Affairs provide legal advice to state agencies with responsibilities for these resources. The division, comprised of five lawyers and a paralegal, assists the Land Department in managing state-owned lands and minerals; the State Engineer in regulating the appropriation of water, regulating dams, dikes, and drains, and managing the beds of navigable rivers and lakes; the Industrial Commission in regulating the exploration and development of oil and gas and administering its lignite grant program; the Health Department in protecting our environment; the Game and Fish Department in managing wildlife and wildlife habitat; the Water Commission in developing and conserving water resources; and the Parks and Recreation Department in managing public recreation areas. The division also represents ag-related agencies. Lastly, the division handles Indian law issues that confront state agencies as well as local officials.

ENVIRONMENTAL PROTECTION

During the biennium, the division assisted the Health Department with its regulatory work involving air pollution control, asbestos abatement, water pollution control, solid waste management, and hazardous waste management. The division assisted the Department in negotiating settlements of pollution control violations. The settlements typically require payment of civil penalties with additional penalties suspended, based on environmental compliance. Resolution often involves "supplemental environmental projects" designed to enhance and protect the environment.

One of the most significant environmental matters in which the division has been involved concerns a fuel spill under downtown Mandan. The problem created a number of legal issues, many of which were complex. In 2001 the division filed suit against the Burlington Northern Santa Fe Railroad. The matter was settled in 2004 with the Railroad paying \$30 million.

Another significant matter on which the division has spent considerable time since 2001 involves the Environmental Protection Agency's interpretation of the Clean Air Act and its application to North Dakota and its power plants. The issue relates to "prevention of significant deterioration" ("PSD") at North Dakota's class 1 air quality areas – Theodore Roosevelt National Park and Lostwood Wilderness Area. Although air quality in these areas is nearly pristine, EPA questions whether the "increments" of air quality deterioration allowed in these areas are being exceeded. North Dakota conducted a PSD "periodic review" in 2002-2003 to address the issue, and determined that PSD increments were not being exceeded and the state's air quality is adequately protected. In 2004 the EPA and state signed an agreement resolving some PSD issues. In April of 2005, the Health Department conducted a periodic review of PSD compliance modeling

and issued a report. On June 30, 2005, the state received from the EPA preliminary approval of the report and modeling.

WATER

The Division of Natural Resources and Indian Affairs, besides handling the day-to-day legal work concerning North Dakota's water resources, was deeply involved in a number of unique issues. Because of the way in which the Corps of Engineers' manages the Missouri River, the division filed suits against the Corps in 2002 and again in 2003. Both suits saved the spring smelt spawn from destruction and helped preserve Lake Sakakawea's walleye fishery. A claim in the 2002 suit asked for an order requiring the Corps to issue a new Master Manual, the document by which the Corps governs the river. Suits were filed by other interests along the river, in which North Dakota is a named defendant or in which the division's motions to intervene were granted.

The Eighth Circuit Court of Appeals issued a decision in 2003 that failed to recognize upstream interests. The division authored a Petition for Certiorari—joined by the State of South Dakota—but the U.S. Supreme Court declined to accept jurisdiction. In 2003 the Missouri River lawsuits cases were consolidated before the U.S. District Court for the District of Minnesota. In 2004 it ordered the Corps to issue a new Master Manual. The new Manual better recognizes the interests of upstream states. The district court rejected challenges to the new Manual by downstream interests. The district court's decision has been appealed to the Eighth Circuit Court of Appeals.

The division also spent considerable time assisting state agencies dealing with Devils Lake flooding. One state response was to construct an outlet from the lake to the Sheyenne River. The outlet provoked considerable controversy. The division represented the state in two lawsuits challenging the Outlet. Each suit was dismissed. The division represents the state in a lawsuit brought in 1999 by landowners in the Devils Lake area. The landowners claim damages by Devils Lake's high water and assert that the state and local water resource districts are responsible for the flooding. The litigation is in the discovery phase.

During the biennium the division represented the water commission in condemnation actions involving the Northwest Area Water Supply Project ("NAWS") and the Devils Lake Outlet Project. And when the Province of Manitoba sued the Department of the Interior in U.S. District Court for the District of Columbia to stop the NAWS project, the state intervened. The division's motion to dismiss the case on jurisdictional grounds failed. The court later ruled that the federal government failed to adequately analyze the project's environmental consequences and ordered further NEPA work. The state and federal government appealed the decision to the Court of Appeals for the District of Columbia.

SOVEREIGN LANDS

The division advised the state engineer in disputes between members of the public wanting to use sovereign lands—the beds and banks navigable waters—and riparian landowners who assert an interest in these lands. A significant Attorney General's

Opinion was issued in 2005 discussing the state engineer's duty to prepare a comprehensive management plan for sovereign lands, in particular the Missouri River.

AGRICULTURAL LAW

The division assisted the Agriculture Department in administering its many laws governing dairy operations, pesticide applications, meat inspection, noxious weeds, apiaries, livestock, ammonia anhydrous operations, non-traditional livestock, and other areas. The division represented the Department in numerous pesticide and livestock dealer enforcement actions, and in judicial actions involving the insolvency of a livestock auction market. It represents the State Seed Department in a suit brought seeking substantial damages for allegedly misidentifying seed potatoes. The division filed amicus briefs in "mad cow disease" cases pending in federal district courts in Montana and the District of Columbia. The briefs support efforts to stop the federal government from allowing Canadian beef into the United States.

The division advised Project Safe Send, the Agriculture Department's pesticide collection and disposal program, and it provided legal advice to about two dozen ag-related agencies, such as the Wheat Commission and Corn Council.

ENERGY

As a member of the Industrial Commission, the Attorney General plays a key role in ensuring that the oil and gas industry complies with the law governing oil and gas exploration and recovery. The Division of Natural Resources and Indian Affairs presided over several hundred of the Industrial Commission's oil and gas administrative hearings and provided advice on the decisions in these cases. The division assisted the Commission in administrative enforcement actions against operators to ensure compliance with oil and gas statutes and regulations. The division also advises the Industrial Commission in administering the Lignite Research, Development, and Marketing Program.

STATE LAND AND MINERALS

As a member of the Board of University and School Lands, the Attorney General helps manage approximately 712,000 acres of state-owned land and 1.8 million acres of state-owned minerals. Income generated from these resources supports the state's schools. The division assisted the Land Board with the many property law questions and lessor/lessee problems that arise in managing a large amount of land and minerals. The division also assisted the Board in its relations with investment banks and advisers.

INDIAN ISSUES

During the biennium, state agencies and local officials were confronted with complex issues involving North Dakota's Indian tribes. The Division of Natural Resources and Indian Affairs provided legal advice on such issues as the role of state law enforcement

officers on reservations and the scope of state regulatory jurisdiction and taxation authority over on-reservation activities.

The division contributed to the 2005 Supplement to the Conference of Western Attorneys General American Indian Law Deskbook.

GAME AND FISH

The division provided in-house counsel and litigation services to the Game and Fish Department and its many programs. The division advised the Department in handling many hunting and landowner “rights” issues, successfully defending the state in landowner’s action challenging the constitutionality of the state’s “open unless posted” hunting law. It helped the Department implement new legislation regulating commercial guides and outfitters and in bringing various enforcement actions. The division successfully defended the state hunting preferences for residents from a constitutional challenge brought by the State of Minnesota. Minnesota has appealed to the Eighth Circuit Court of Appeals.

CORPORATE FARMING

The division is responsible for enforcing the state’s corporate farming law. Questions about the law’s constitutionality and its proper interpretation have increased as a result of more land purchases for recreational purposes and for large-scaled confined livestock feeding facilities. The division represents the state in an action against a nonprofit company that acquired farm land in violation of the corporate farming law and who now challenges the constitutionality of the law.

NATIONAL GRASSLANDS

The United States Forest Service has taken a number of significant management initiatives affecting the Little Missouri and Sheyenne River National Grasslands. The division has actively monitored these events and submitted formal comments on some of them, such as proposed revisions to the Grasslands Management Plan. The division filed suit challenging the Forest Service’s “off-highway vehicle” policy, its roadless rule, and its failure to recognize the applicability of the state’s section line right-of-way law to federal land. The suit is pending.

STATE AND LOCAL GOVERNMENT DIVISION

One of the Attorney General's most important statutory duties is issuing Attorney General opinions on questions of law in which the state and its political subdivisions have an interest. The State and Local Government Division is primarily responsible for researching and drafting these Attorney General opinions. Attorney General's opinions help interpret laws and guide state and local officials in applying laws. Opinions give this office's best prediction of how court would resolve an issue.

The State and Local Government Division also provides day-to-day legal services to over 65 state agencies, boards, and commissions. By providing consistent oral and written legal advice, reviewing documents and contracts, and being available for consultation and legal research, the attorneys assist agencies in applying the law consistently and fairly, and help to prevent legal problems from arising. The division is staffed, on average, by ten full-time attorneys, one half-time attorney, and one half-time legal assistant.

GENERAL FUNCTIONS

The State and Local division provides a myriad of services including:

- **Legal Opinions.** The Attorney General is frequently asked for legal opinions by state legislators, state officials, county state's attorneys, city attorneys, city governing bodies, water resource boards, and soil conservation districts. These opinions guide the actions of public officials until the courts decide the issue. During this biennium the Attorney General issued 177 opinions. The Attorney General issued 32 opinions to legislators, 30 to state's attorneys, 25 to city attorneys, 34 to state agencies, five to other entities, and 51 to public entities at the request of members of the public or media regarding alleged violations of the open records/open meetings laws.
- **Open Records and Open Meetings.** Since 1997, the open records and open meetings laws have authorized the Attorney General to issue opinions to public entities in response to a complaint by a member of the public, including representatives of the media, that the public entity had violated the open records or open meetings law. This form of administrative review has proven to be an effective vehicle to remedy violations of the open records and meetings law. Between July 1, 2003, and June 30, 2005, the office issued 51 opinions, up from 31 opinions issued last biennium, based on alleged violations of the open records or open meetings laws. The division also handled a large number of telephone calls from public entities and citizens regarding open records and meetings requirements. Responding over the telephone in many cases eliminated possible violations or opinion requests.
- **Administrative Rule Review.** By statute the Office of Attorney General must review all administrative rules adopted by state agencies and boards for legal

sufficiency and to ensure that proper procedures have been followed. The office reviewed 67 sets of rules during the biennium.

- **Joint Powers Agreements.** The division reviewed all joint powers agreements involving the state or state agencies prior to their execution.
- **Bond Counsel Services.** Division staff also participated in and delivered Issuer's Counsel Opinions on each bond transaction generated by every state agency, other than some for the State Board of Higher Education.
- **Legislative Advisory Services.** During the 2005 Legislative Session, attorneys from the division assisted agencies and members of the Legislative Assembly by drafting bills and amendments, explaining the ramifications of proposed legislation and testifying before legislative committees when requested.

All Attorney General opinions issued since January 1, 1993, are posted on the Office of Attorney General's home page at <http://www.ag.state.nd.us>. The Open Records/Open Meetings Manual is also available on the home page.

SIGNIFICANT ATTORNEY GENERAL OPINIONS

- N.D.C.C. § 20.1-08-04.9 requires the Governor, in his proclamation, to prohibit nonresidents from all hunting on land owned or private land enrolled by the department for purposes of hunting or on land for which the department pays in lieu of tax payments. The period during which nonresidents are prohibited from hunting on these department lands is the first seven days of the pheasant season. N.D.A.G. 2003-L-33.
- The Department of Health may not disclose ground water monitoring program information if disclosure will provide a means to identify landowners or operators participating in the program unless it is determined that a compelling public interest justifies the disclosure. N.D.A.G. 2003-L-38.
- A county may not use its general zoning authority to close land to hunting. Such an ordinance would conflict with state law, which provides that only the owner or tenant may prohibit hunting on the owner's or tenant's land. N.D.A.G. 2003-L-48.
- A county may declare a local emergency and ban open fires. The county may not, however, impose a criminal penalty for violating the ban. N.D.A.G. 2003-L-57.
- A city without home rule authority may not regulate or license mopeds or motorized scooters. N.D.A.G. 2003-L-59.
- Qualified military service members are entitled to receive 20 days' paid leave each year, and 30 days' paid leave in the year in which the mobilization occurs. N.D.A.G. 2004-L-13.

- Medication may not be administered to inmates in a detention center unless the person administering the medication is a licensed nurse, another qualified licensed person acting within the scope of his or her license, or a registered medication assistant. N.D.A.G. 2004-L-20.
- A performing arts school offering a program approved by the North Dakota Department of Education and receiving state foundation aid, may not charge for courses offered for academic credit or if the course is considered a core subject. N.D.A.G. 2004-L-46.
- Public funds entrusted to a public entity belong equally to the proponents and opponents of a pending ballot measure. Therefore, while the public entity may provide the public with neutral factual information regarding a proposed measure, it may not use public funds to support its position on the measure. N.D.A.G. 2004-L-55.
- A Montana armored car company, whose employees are licensed in Montana, is not exempt from licensing by the North Dakota Private Investigation and Security Board. The federal law that provides reciprocity only provides reciprocity between states for firearms licenses issued to armored car personnel; it does not provide reciprocity for private security service licenses for armored car companies. N.D.A.G. 2004-L-68.
- As a general rule, constructing a hiking or biking trail within an existing right of way of a general easement granted for a public highway without any restrictions or limitations is a permissible use of the easement for which the abutting landowner need not be compensated. N.D.A.G. 2004-L-71.
- The University of North Dakota buildings and grounds may, to the extent they are traditionally or by designation made available for public use, be used as a public forum for free speech pursuant to the First Amendment of the United States Constitution, subject to reasonable content-neutral time, place, and manner regulations. A temporary prohibition of short duration against all solicitations of students during student orientation at the University of North Dakota is a permissible content neutral restriction on the time, place and manner of expression that is narrowly tailored to serve a significant government interest, and may be lawfully applied so long as ample alternative channels of communication are open. N.D.A.G. 2004-L-75.
- A school district rule allowing an 18-year-old student to be suspended from attending an extracurricular activity such as the prom for smoking tobacco off school property and not during school hours is unreasonable unless the school district can demonstrate that the conduct in question will have negative repercussions in the school environment. N.D.A.G. 2004-L-77.
- The Wheat Commission lacks authority to incur legal and consulting expenses for its ongoing trade litigation beyond the revenues generated by the wheat tax levy dedicated for this purpose in the current biennium. N.D.A.G. 2004-L-78.

- The state may allow land developers to construct wildlife habitat on sovereign lands provided the state permit to do so is issued under a comprehensive river management plan, the habitat serves a public purpose, the habitat's presence does not unreasonable interfere with the public use of the river, and the constitution's anti-gift clause is satisfied. N.D.A.G. 2005-L-01.

Significant Opinions relating to the Open Records and Meetings Laws

- The Dakota Center for Independent Living is a public entity subject to the open records and meetings laws because the Center is recognized by state statute to perform a governmental function and is supported by public funds. N.D.A.G. 2003-O-08.
- The Jamestown Police Department violated the open records laws when it failed to release criminal investigative information on a case that was no longer active. N.D.A.G. 2004-O-03.
- In order for a delegation of authority from a governing body to come under the open meetings laws the delegation must be to a "group of persons." A city council did not violate the open meetings law when one council member volunteered to meet with a city employee, and another member appeared at the meeting as a witness, because the council had only delegated authority to a single council member. N.D.A.G. 2004-O-12.
- The Fargo-Moorhead Chamber of Commerce is not a public entity subject to the state's open meetings laws because it is not supported in whole or in part by public funds; nor is it performing a governmental function as an agent of a public entity. N.D.A.G. 2004-O-14.
- The Barnes and Noble Bookstore at the University of North Dakota is an agent of the University and is therefore a public entity subject to the open records laws. The booklist it created, however, which is a compilation of some 2,000 books required or recommended for classes, is a trade secret and not subject to disclosure by Barnes and Noble. N.D.A.G. 2004-L-25.

APPENDICES

Appendix A - Office of Attorney General 2003-2005 Biennium Expenditures

By Line Item - Total Expenditures \$29,372,985

Appendix B - Office of Attorney General 2003-2005 Biennium Expenditures

By Division – Total Expenditures \$29,372,985

Appendix C - Office of Attorney General 2003-2005 Biennium Expenditures

By Funding Source - Total Expenditures \$29,372,985

Appendix D – Costs Associated with Prosecuting and Defending Actions

On Behalf of the State For the 2003-2005 Biennium

Appendix E - Analysis of Licensing Activity

For the 2003-2005 Biennium

Appendix F – North Dakota Games of Chance

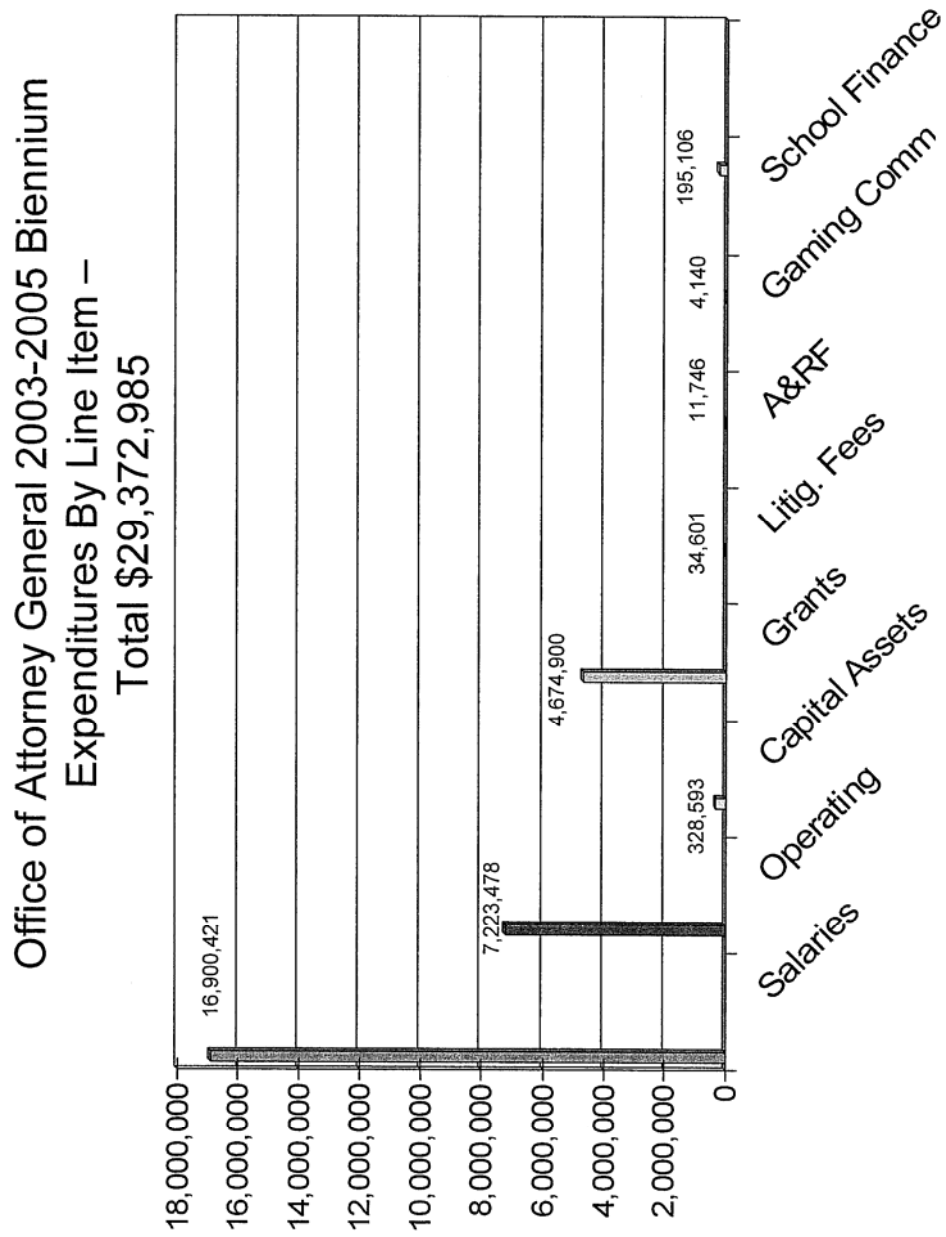
Fiscal Year Ending June 30, 2004

Fiscal Year Ending June 30, 2005

Appendix G – Statement of Revenues, Expenses and Changes in Net Assets

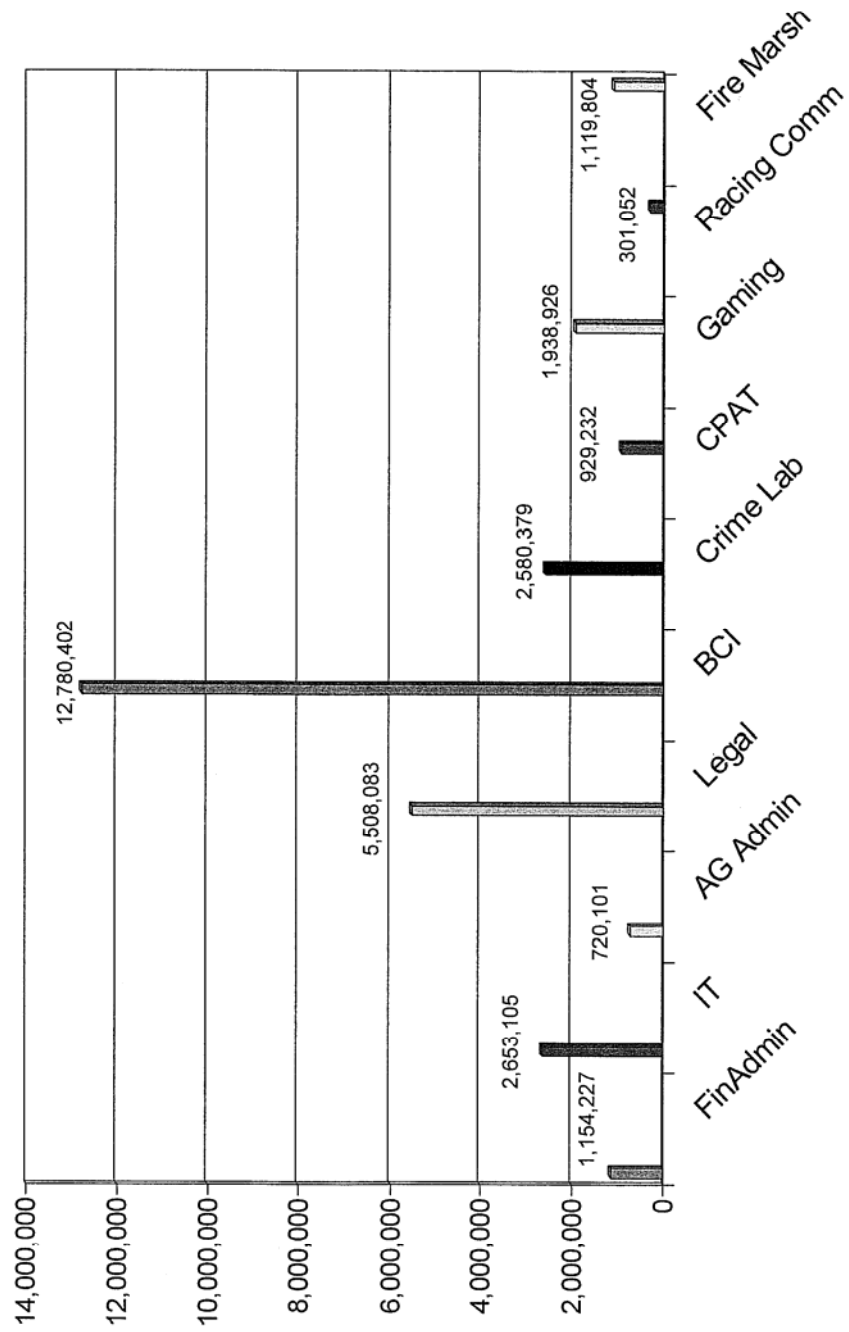
For the 2003-2005 Biennium

APPENDIX A



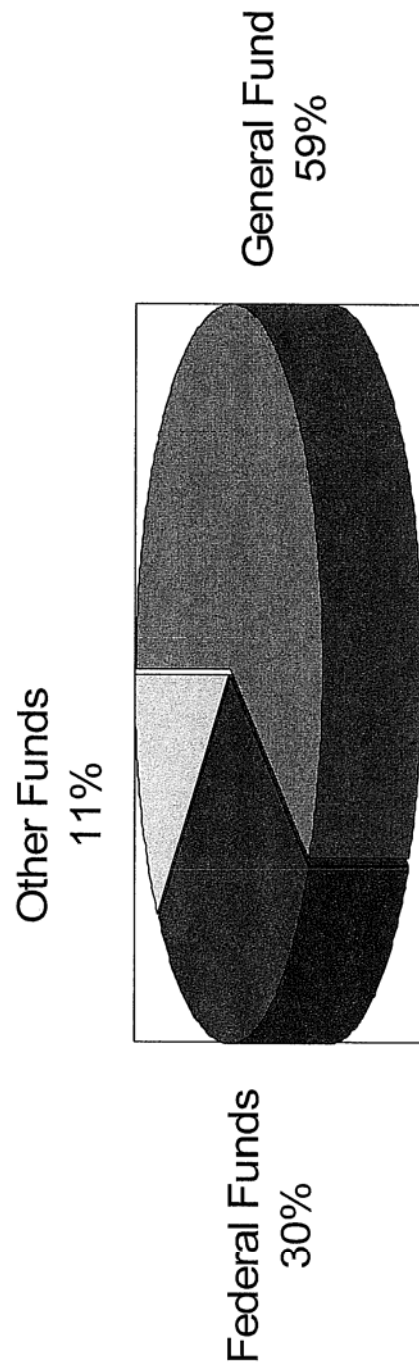
APPENDIX B

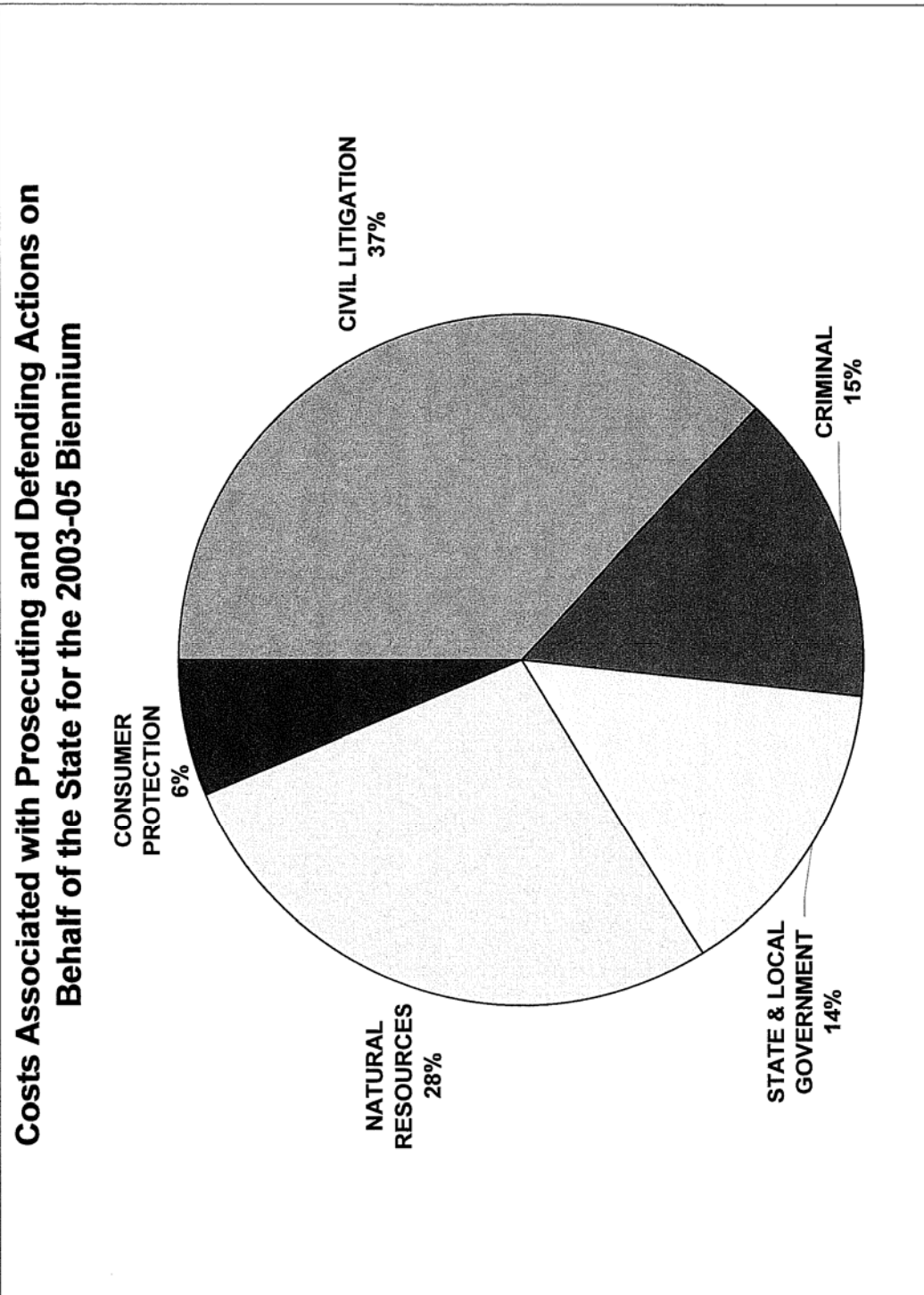
Office of Attorney General 2003-2005 Biennium Expenditures By Division – Total \$29,372,985



APPENDIX C

Office of Attorney General
2003-2005 Biennium Expenditures
By Funding Source
Total \$29,372,985





APPENDIX E

Analysis of Revenue Deposited by Licensing For the 2003-2005 Biennium

Licensing Revenue Deposited:

Type of License	Number Issued	Revenue Collected
Beer License	3,153	\$246,305
Liquor License	2,912	226,316
Cigarette License	3,939	63,700
Coin License	278	101,225
Detection of Deception License	33	1,165
Fairboard License	20	1,000
Gaming/Distributor/Manufacturer	1,439	338,350
Transient Merchant License	90	17,850
Wholesale Fireworks	45	11,250
Total Licensing Revenue Deposited	11,909	\$1,007,161

Other Sources of Revenue Deposited:

Source of Revenue	Number of Transactions	Revenue Collected
Gaming Tax	2,668	\$6,808,473
Gaming Excise Tax	2,395	12,873,370
Gaming Stamps	58	50,400
Gaming Tax-Interest and Penalty	178	14,376
ND Record Checks	5,848	169,342
Out of State Record Checks	1,778	33,632
Indian Gaming Investigative Costs	14	14,668
Attorney Billing	506	405,107
CPAT Judgment Collections	155	849,862
Assessment of Monetary Fines	46	36,775
CPAT Telemarketers	1	1,000
Racing	1,655	2,443,359
Crime Lab	449	4,663
Lottery	1,414	272,818
Transfer of Federal Funds	1	94,000
Miscellaneous	526	1,137,917
Total Other Revenue Deposited	17,692	\$25,209,762
Total Revenue Deposited	29,601	\$26,216,923

APPENDIX F

NORTH DAKOTA GAMES OF CHANCE

Gaming Activity

Fiscal Year Ended June 30, 2004

	Gross Proceeds	Prizes	Adjusted Gross Proceeds
Bingo	\$42,959,813	\$32,848,237	\$10,111,576
Bingo (Dispensing Devices)	3,660	2,384	1,276
Raffles	3,331,986	1,436,942	1,895,044
Pull Tabs (Jar Bar)	100,688,127	79,810,900	20,877,227
Pull Tabs (Dispensing Devices)	48,994,119	38,019,343	10,974,776
Club Specials, Tip Boards, Coin Boards, & Seal Boards	797,953	582,196	215,757
Punchboards	13,021	8,684	4,337
Sports Pools	117,805	97,483	20,322
Twenty-one	69,919,711	58,841,977	11,077,734
Calcuttas	204,679	170,763	33,916
Paddlewheels	103,942	50,129	53,813
Paddlewheels – With a Table	\$4,896,164	\$3,555,073	\$1,341,091
TOTALS	\$272,030,980	\$215,424,111	\$56,606,869
Plus:	Interest Earned, Cash Long (Short), & Poker		\$90,389
Less:	ND Excise Tax		\$6,483,208
	Federal Excise Tax		104,176
	Bingo Sales Tax		2,448,060
	Total Adjusted Gross Proceeds		\$47,661,814
Less:	ND Gaming Tax		\$3,431,622
	Allowable Expenses		27,743,021
	Total Deductible Expenses		\$31,174,643
	Net Proceeds Earned		\$16,487,171

Continued

Fiscal Year Ended June 30, 2005

	<u>Gross Proceeds</u>	<u>Prizes</u>	<u>Adjusted Gross Proceeds</u>
Bingo	\$39,641,385	\$29,976,056	\$9,665,329
Bingo (Dispensing Devices)	8,098	3,333	4,765
Raffles	3,306,029	1,387,139	1,918,890
Pull Tabs (Jar Bar)	94,552,788	75,001,501	19,551,287
Pull Tabs (Dispensing Devices)	52,204,761	40,585,738	11,619,023
Club Specials, Tip Boards, Coin Boards,& Seal Boards	864,837	633,047	231,790
Punchboards	24,512	18,779	5,733
Sports Pools	112,567	91,371	21,196
Twenty-one	72,620,347	61,273,972	11,346,375
Calcuttas	177,269	149,742	27,527
Paddlewheels	120,050	57,202	62,848
Paddlewheels – With a Table	\$4,720,781	\$3,510,267	\$1,210,514
TOTALS	<u>\$268,353,424</u>	<u>\$212,688,147</u>	<u>\$55,665,277</u>
Interest Earned, Cash Long (Short), &			
Plus:		Poker	\$192,251
Less:	ND Excise Tax		\$6,360,861
	Federal Excise Tax		98,393
	Bingo Sales Tax		<u>2,274,867</u>
	Total Adjusted Gross Proceeds		\$47,123,407
Less:	ND Gaming Tax		\$3,360,557
	Allowable Expenses		<u>27,327,834</u>
	Total Deductible Expenses		\$30,688,391
	Net Proceeds Earned		\$16,435,016

APPENDIX G

NORTH DAKOTA LOTTERY

Statement of Revenues, Expenses and Changes in Net Assets
For the 2003-2005 Biennium
Audit in Progress

Operating Revenues:

Ticket Sales	\$24,895,892
Other Operating Revenue	363,763
Total Operating Revenues	<u>\$25,259,655</u>

Operating Expenses:

Prize Expense	\$11,875,949
Retailer Commissions	1,244,795
Contractual Services Expense	2,579,212
Marketing	447,044
Salaries and Benefits	674,968
Operating	369,789
Total Operating Expenses	<u>\$17,191,757</u>

Operating Income	<u>\$8,067,898</u>
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Nonoperating Revenues:

Interest Income	<u>\$62,949</u>
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Income Before Transfers	<u>\$8,130,847</u>
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Transfers to Other Funds:

Compulsive Gambling Fund	\$400,000
State General Fund	7,269,005
Total Transfers to Other Funds	<u>\$7,669,005</u>

Total Net Assets - End of Biennium	<u>\$461,842</u>
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